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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 574

THE RESCUE ARMY, A CORPORATION, AND CHARLES T. MURDOCK, APPELLANTS,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED OCTOBER 5, 1946.

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[fol. 1] [File endorsement omitted.]

[fol. 2]

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

THE RESCUE ARMY, a corporation, and CHARLES T. MURDOCK, Petitioners,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES, Respondent.

PETITION FOR WRIT OF PROHIBITION—Filed November 27, 1943

To the District Court of Appeal of the State of California, Second Appellate District, Division Three:

Your Petitioners above named, by this their verified Petition for a Writ of Prohibition, respectfully set forth the following facts for the issuance thereof:

I

That the petitioner, The Rescue Army above named, is and at times herein mentioned, was a corporation organized and existing under and pursuant to the laws of the [fol. 3] State of California, and now has, and at all such times had its offices and principal place of business at 9405 South San Pedro Street, in the City of Los Angeles, California, and that petitioner, Charles T. Murdock, is a member and officer of said The Rescue Army, and a resident and citizen of the City of Los Angeles, State of California, and of the United States.

II

That said The Rescue Army is a non-profit corporation which engages in religious work and that all of its activities are directed toward and in the interest of said religious work, and that said activities consist of the maintenance of three churches within the above named county in which preaching the gospel of the Christian religion and other religious services including Sunday

schools are regularly conducted, the general distribution of religious literature, the free distribution of bibles to men in the armed forces of the United States, charities incident to said religious activities, and the solicitation from the public of funds which are devoted to said religious activities, all of which said religious activities now are and at all times mentioned herein have been carried on by petitioner.

III

That articles of the constitution of said The Rescue Army, which designates its purposes, reads as follows:

> [fol. 4] "Its object shall be to maintain and support, a nation-wide missionary institution; to conduct religious services by preaching the pure gospel of salvation; to minister to the sick and needy and comfort the fatherless; to rescue the fallen and to do those things needful for the promotion of Christian faith; to carry the gospel to the unchurched masses by maintaining missions or tent meetings among them; to engage and support godly ministers and evangelists to extend this work to all parts of this nation and to foreign countries."

IV

That petitioner herein, Charles T. Murdock, at all times mentioned herein was, and he now is a duly ordained officer of said The Rescue Army and the office which he has so occupied and now occupies is designated "State Commander", with the rank of Lieutenant General in said Army, and that one of the duties of his said office is to solicit, in person or through other army members, donations of money, and for other things of value from the general public to be used in the said religious activities of said The Rescue Army, and that all such money and/or things of value which have been and are received by said Murdock through such solicitations have been and are, and have been given to said The Rescue Army for use in its said religious activities, to which said activities and the duties of his said office, said Murdock is required [fol. 5] by said army to, and he now does, devote and at all times herein mentioned has devoted, his entire time, attention and efforts.

V

That at all times herein mentioned there was and now is in effect in the City of Los Angeles an ordinance, entitled the "Charities and Relief" Ordinance, numbered 77,000, a copy of which said ordinance is attached hereto and marked Exhibit A, and made a part of this petition by reference, which said Ordinance purports to and by its provisions does prohibit the exercise of the right of religious freedom by church and other religious organizations through the solicitation of money, or anything of value, or by the sale thereof, for religious purposes except upon the payment of a license tax or fee to said city, and the issuance of a license or permit by said city to so solicit; that said ordinance forbids and penalizes said solicitations by a class of solicitors which it designates as "Promoters" unless and until said "Promoters" shall have paid to said city a license tax or fee of $25.00 and have posted a bond in the sum of $2,000.00, and said ordinance likewise requires of another class of solicitors a payment of a license tax or fee and the posting of a bond in the sum of $500.00 with the Board of Social Service Commissioners of said City, and said ordinance further forbids any "promoter" or other "solicitor" to solicit without having first obtained a permit or license [fol. 6] so to do from said city, which said permit or license so to do from said city, which said permit or license is designated in said ordinance by the term "Information Card."

VI

That section 44.16 of said Ordinance purports to exempt from the requirements of the payment of said license taxes or fees and the posting of said bonds and the obtaining of said licenses or permits those solicitors whose solicitations are "purely" for "evangelical, missionary or religious purposes"; but petitioners aver that said city and its boards, officers and other agents have at all times herein mentioned construed and applied, and now construe and apply said last named provision to exclude from said exemption all solicitors who do not entirely donate their services and if any portion, however small, of the collections made by said solicitors are to be or are used for charity even though such charity is an essential activity and an integral part of a missionary,

evangelical or religious activity of a church or other religious organization; petitioners aver that each, every and all of the provisions described in this paragraph and in paragraph V of this petition is and they all constitute a prior restraint upon the exercise of the right of religion and as such violate Amendments One and Fourteen to the Constitution of the United States.

[fol. 7] VII

That said Ordinance as construed and applied by said city, its officers, boards and other agents, classifies all religious activities of churches, religious associations and other religious organizations as charities and as being for charitable purposes, and thereby subjects said religious organizations to all of the said licensing and permit requirements of said ordinance; that said ordinance provides that said city, through its Department of Social Service may "approve" such "charitable associations" as it deems are entitled to such approval and thereby exempt them and their promoters and solicitors from the provisions of said ordinance hereinbefore described and from the necessities of time-consuming delays in investigations and other procedural requirements of said ordinance, and said ordinance, section 44.09 thereof, provides that said Board of Social Service Commissioners may by "express written permission" allow any person to solicit contributions by means of a box or receptacle, upon any street, sidewalk or way, or in any public park, or in any publicly owned or controlled place, although without such "express written permission", all persons are forbidden by said section to so solicit as aforesaid;

Petitioners aver that said last described provision of said section 44.09 and of said provision authorizing said Department of Social Service to approve such charitable associations as it deems entitled thereto, arbitrarily [fol. 8] grants and permits to be granted privileges and immunities to a portion of a class while denying the same to others and that said provisions authorize the granting of special privileges to certain persons which are not given to others similarly situated, and are thus violative of Article I, section 21 of the Constitution of California and of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution.

VIII

That said Ordinance as construed and applied by said City, its boards, officers and other agents, authorizes said Department of Social Service and its Secretary to investigate and determine whether a church or other religious organization is religious or charitable, and whether the purpose to solicit for which any person makes application for a license or permit is religious or charitable, and to grant or deny such application according to such determination of said Department or its said Secretary, and that said Department and its said Secretary have, heretofore, made investigation of petitioners herein and, although said petitioners have at all times herein mentioned informed said Department and said Secretary and said Board and have stated to each of said city agencies that said petitioners, and each of them, are engaged in religious activities only and solicit money and other things of value in support of said The Rescue Army and [fol. 9] its activities as herein described, said Department and its said Secretary have determined that said solicitations are not for said or any religious purposes and have classified said purposes as for charity, only and petitioners aver that said Ordinance as so construed and applied constitutes an infringement of petitioners' right to religion, whose free exercise is guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

IX

That said sections 44.09 and 44.12 are not, and neither of them is, severable from other sections of said Ordinance, or from the whole body thereof, but are dependent upon and interdependent with other sections of said Ordinance, and derive their pretended legality solely from the fact that they are a part of a purported regulatory law enacted in the exercise of governmental power.

X

That the free right and license to solicit money to be used in religious activities, and especially in each of the religious activities in which petitioners engage and have engaged as above set forth, has been and is given, granted and guaranteed unconditionally and forever to

all churches and religious organizations and to all persons who solicit for said purposes or organizations, and in particular to said The Rescue Army and to said Murdock, by the First and the Fourteenth Amendments to the Constitution of the United States, and that even [fol. 10] though regarded as for charitable purposes as said city, its said Board and Commission, officers and agent, have classified the said solicitations of said Murdock as above set forth, said Ordinance is, and all of the provisions of said Ordinance named in paragraph VII of this petition are violative of said last named amendment and of Article I, section 21 of the Constitution of California, and the equal protection of the laws clause of the said Fourteenth Amendment.

XI

That on the 12th day of January, 1942, the City of Los Angeles, and Ray L. Chesebro as City Attorney of said City, caused a complaint to be sworn to and filed in the Municipal Court of the said City of Los Angeles in and by which said [redacted]dock was charged with having violated sections 44.09 and 44.12 of said Charities and Relief Ordinance in that, as it is charged in said complaint, Court I thereof, said Murdock solicited contributions, and in Court II thereof, that said Murdock had no permit or Information Card, and failed to show the same to a person solicited by said Murdock for a contribution, which complaint is filed in said Municipal Court as Criminal No. 169931.

That forthwith upon the filing of said complaint in said Municipal Court as aforesaid, said respondent caused to be and there was issued by said last named Court a warrant of arrest directed to be served upon said Murdock, which said warrant of arrest was predicated upon said complaint, [fol. 11] and the said warrant of arrest was thereafter served upon said Murdock by a police officer of said City and said officer then and thereupon took said Murdock into custody; and such proceedings were thereafter had in said Municipal Court in said matter and cause that the same was set for trial in said Municipal Court in Division Eight thereof on the 1st day of February, 1943, and upon said trial, said Murdock was convicted upon both counts and was sentenced to pay a fine, or in lieu of said payment to serve in the jail of said city; that thereafter said Murdock duly

appealed from said judgment and sentence to the Superior Court of Los Angeles County, and upon said appeal said judgment and sentence was duly reversed by said appellate court;

That said City and said City Attorney thereupon caused said matter and cause to be retried in said Municipal Court on May 11, 1943, and said Murdock was again convicted and sentenced as before; that said Murdock again appealed and said last imposed sentence was reversed by said Superior Court, that thereafter, said City and said City Attorney caused said matter and cause to be reset for trial in said Municipal Court on November 30, 1943.

XII

That prior to the filing of said complaint as above set forth, respondent had filed a complaint against James L. Carles, one of the solicitors for said the Rescue Army, in which complaint, the same charges were made as in the [fol. 12] complaint against said Murdock, but that after a trial by jury, said Carles acquitted.

XIII

That said respondents and each of them claim that they have a right to compel petitioners to obey all of the provisions of said Ordinance number 77,000, and especially of said sections 44.09 and 44.12 thereof, and to arrest said Murdock and all other solicitors for said The Rescue Army who fail to comply fully with any and all of the provisions of said Ordinance, and, in particular with said sections 44.09 and 44.12, and said respondents have threatened and now threaten to continue to arrest said Murdock and any other person who solicits contributions of any kind for said The Rescue Army from any person in violation of either of said last named sections who otherwise fails to comply with any of the provisions of said Ordinance.

XIV

That pursuant to said guarantees contained in Articles One and Fourteen of said Federal Constitution, and in reliance thereon, and not otherwise, said The Rescue Army was incorporated for said religious purposes set forth in its articles of incorporation as aforesaid, and thereafter solicited and received from its members and the general

public substantial sums of money and other things of value with which to constitute, organize, equip and carry on its said religious activities in its churches and in reliance [fol. 13] upon said guarantees, and not otherwise, said the Rescue Army used said money and the proceeds from said other things of value to organize and equip its said churches and to provide articles and things with which to conduct and to carry on its religious activities hereinbefore described and enumerated.

XV

Petitioners aver that their money and other things of value received by said The Rescue Army, through solicitations of said Murdock provided, and at all times herein mentioned have provided, a substantial part of the funds which support and maintain and are necessary to the maintenance of said The Rescue Army and its said religious activities and that if said Murdock is compelled by said respondent to cause said solicitations, said religious activities will be greatly impaired and reduced, and said The Rescue Army will be forced to partly abandon the same and that great and irreparable injury will result to said army and to all of the religious work which it conducts as above set forth.

XVI

That petitioners allege that the evidence presented by the prosecution in each of said prior trials of said prosecution against said Murdock, was the same, and that if said matter should be tried again, no other or different evidence is available or could be produced; that said Municipal Court threatens to proceed with a third trial of said Charles T. [fol. 14] Murdock upon said charges, on the date set for said trial, to wit, November 30th, 1943, and will, if consistent with its former decision, find said Murdock guilty, but without authority, and in excess of its jurisdiction in the matter and contrary to the First and the Fourteenth Amendments to the Federal Constitution and to Article I, Section 21 of the Constitution of California, find the said Murdock guilty on both counts of said complaint, and will thereby compel said Murdock to again appeal to said Superior Court.

XVII.

That the said corporation, The Rescue Army, is a party in interest and a party beneficially interested, and that it has property rights and financial interests in the outcome of the said prosecution against said Murdock which is sought to be enjoined as more fully appears from allegations in that behalf herein above set forth.

XVIII

That your petitioner, Charles T. Murdock, is the party beneficially interested in these proceedings and that other parties in interest and whose interest will be directly affected by this proceeding are the City of Los Angeles, a Municipal corporation and Ray L. Chesebro, the City Attorney of said City, as the prosecutor in said Municipal Court action against said Murdock.

XIX

That petitioners have no plain, speedy or adequate [fols. 15-16] remedy at law and have no remedy otherwise than through preventive relief by this court.

XX

That heretofore petitioners presented to the Appellate Department of the Superior Court of the State of California in and for the County of Los Angeles a petition for a Writ of Prohibition in the instant matter in which petition the same averments were made and the same cause of action set forth as in the petition herein, and that on November 26, 1943, said Appellate Department refused to issue said writ and denied said petition.

Wherefore, petitioners pray that an alternative Writ of Prohibition be issued commanding said Municipal Court of the City of Los Angeles to refrain from trying said matter and cause in which said Charles T. Murdock is defendant or from taking any action therein until the further order of this Court, and that said Superior Court be directed to show cause before this Court, and that said Superior Court be directed to show cause before this Court, at a specified time and place, why it should not be permanently restrained from taking any further proceedings, or making any other orders affecting peti-

tioners herein, based upon the allegations or charges of said complaint in said case against said Charles T. Murdock, other than to dismiss said case.

Robert H. Wallis, Attorney for Petitioners.

[fol. 17] *Duly sworn to by E. L. Wheeler jurat omitted in printing.*

[fol. 18] EXHIBIT "A" TO PETITION

Charities

L. A. Municipal Code—Ord. No. 77,000

As Amended by Ordinance Nos. 80,920, 81,618 and 84,121

Chapter 4

Article 4—Charities and Relief

Sec. 44.01. Definitions:

For the purposes of this Article, the following words are defined and shall be construed as hereafter set forth unless it shall be apparent from the context that they have a different meaning:

"Board" shall mean the Board of Social Service Commissioners;

"Charitable" shall include the words philanthropic, social service, benevolent, patriotic, either actual or purported;

"Contribution" shall include the words alms, food, clothing, money, property or donations under the guise of a loan of money or property;

"Department" shall mean the Department of Social Service;

"Person" (Added by Ordinance No. 80,920, approved March 1, 1939) shall be construed as defined in Sec. 11.01 of this Code.

"Promoter" (Added by Ordinance No. 80,920, approved March 1, 1931) shall mean any person who for [fol. 19] pecuniary compensation or consideration received, or to be received, solicits or is engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable

association, corporation or institution, or conducts, manages or carries on or agrees to conduct, manage or carry on or is engaged in the business of or holds himself out as engaged in the business of conducting, managing or carrying on any drive or campaign for any such purpose; provided, however, that pecuniary compensation or consideration as used herein, shall include, but shall not be limited to, participation on a percentage basis in any fund solicited, or raised, for or on behalf of any other person, firm, association or corporation; provided, further, that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this article.

"Solicitation" shall mean and include the following:

(1) Any oral or written request;

(2) The distribution, circulation, mailing, posting or publishing of any handbill;

(3) The making of any announcement to the press, over the radio, by telephone or telegraph concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance drive, entertainment, exhibition, exposition, party, performance, picnic, sale or social [fol. 20] gathering, which the public is requested to patronize or to which the public is requested to make a contribution for any charitable purpose connected therewith;

(4) The sale of, offer or attempt to sell, any advertisement, advertising space, book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket or other thing in connection with which any appeal is made for any charitable purpose or the name of any charity, philanthropy or charitable association is used or referred in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will go or be donated to any charitable purpose or association.

A solicitation as defined herein shall be deemed completed when made, whether or not the person making the

same receives any contribution or makes any sale referred to in this Article.

Sec. 44.02. Powers of Board:

The Board shall have the following powers:

(a) To publish results of any investigation provided for or authorized in Section 44.03, subdivisions (a), (b) and (c) of this Article;

(b) To give such publicity to any such results by such means as may be deemed best to reach the general public and persons interested;

[fol. 21] (c) To waive the whole or part of any provisions of Sections 44.03, 44.05, 44.06, 44.10, 44.11, 44.12, 44.13, 44.15, and 44.02 excepting this sub-section, of this Article for the purpose of meeting any extraordinary emergency or calamity;

(d) To request return of Information Cards to the Department upon completion of solicitation for which they are issued or at the expiration of the period for which they are valid;

(e) Upon receipt of additional information which, in the opinion of the Board, shall render incorrect any statement set forth in any such Information Card, the Board shall recall every such Information Card and amend or correct the same or issue in lieu thereof a new Information Card amended or corrected in accordance with such additional information, and that upon receipt of notification to return any Information Card for amendment or correction or new issue, as above provided, the association or person who filed the Notice of Intention for the solicitation for which any such card was issued must present such recalled Information Card to the Department within 48 hours from the time of receipt of said notification;

(f) To waive all conditions of this Article upon application of person filing Notice of Intention, in respect to Information Cards and filing copies of written authorization when a campaign or drive for raising funds for any charitable purpose is given general publicity through the [fol. 22] press or otherwise, and when more than twenty-five (25) persons serve as solicitors without compensation, if it shall be proved to the satisfaction of the Board that the publicity concerning the solicitation fully informs

the general public and the persons to be solicited as to the facts required to be set forth on the Information Card.

Sec. 44.03. Powers of Department:

The Department shall have the following powers:

(a) To investigate the allegations of Notice of Intention, or any statement or reports;

(b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made;

(c) To investigate at any time the methods of making or conducting any such solicitation;

(d) To issue to all solicitors Information Cards which cards shall show:

(1) That same is issued as information for the public and is not an endorsement;

(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;

(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;

(4) Any additional information obtained as shall in the [fol. 23] opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made;

(e) To charge a fee for supplying Information Cards, at the rate of four cents per card; provided that when more than twenty-five cards are issued at one time for the same solicitation, the fee for all such cards in excess of twenty-five shall be one cent per card.

Sec. 44.04. Fraud—Solicitation:

No person shall make or perpetrate any misstatement, deception or fraud in connection with any solicitation of any contribution for any charitable purpose.

Sec. 44.05. Charity Solicitation—Notice of Intention:

No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within

the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

(a) The purpose of the solicitation and use of the contribution to be solicited;

[fol. 24] (b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

(c) The character of such solicitation and how it will be made or conducted;

(d) The expenses of the solicitation, including salaries and other items, if any, regardless or from what funds such expenses are payable.

(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer [fol. 25] of such association having charge of the records thereof;

(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article

and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation.

Sec. 44.06. Charity—Solicitor's Agreement—Notice of Intention—Additional Information:

There shall be filed with the Department with such Notice of Intention a statement of any agreement made with any agent, solicitor, promoter, manager or conductor of such solicitation together with a copy of each agreement which may be in writing. Within twenty-four hours after any change in any such agreement or the making of any new or further agreement, a true copy of such change or agreement, if in writing, or if not, written details thereof shall be filed with the Department. Whenever, in the opinion of the Board, the Notice of Intention filed with the Department does not disclose sufficient information for the public concerning the facts hereinabove required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects. Provided, however, that the Board, [fol. 26] for good cause, may extend the time for filing such additional information. The Notice of Intention and such additional information, if requested, shall be signed by such person intending to make such solicitation, or if by or on any association, by at least two officers of such association and shall be open to the inspection of the public.

Sec. 44.07. Name of Solicitor:

No person shall use in soliciting or give to any person whomsoever, either a fictitious name or an alias or any other than his full, true and correct name, or make any such solicitation without at the time of giving to the person solicited his own full, true and correct name, nor shall he impersonate any other person in making such solicitation.

Sec. 44.08. Charitable Associations—Accounting System —Maintenance of:

No person shall solicit any contributions for or on behalf of any charitable association unless such association is maintaining a system of accounting whereby all donations to it and all disbursements made by it are entered upon the books or records of its treasurer or other financial officer.

Sec. 44.09. (As amended by Ordinance No. 84,121, approved Feb. 5, 1941) Solicitation—Boxes—Receptacles:

(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon any [fol. 27] public street, sidewalk or way, or in any public park or in any publicly owned or controlled place, except by the express written permission of the Board.

(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box of receptacle in any place immediately abutting upon any public sidewalk or way, or in any place of business open to the public, or in any room, hallway, corridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a "notice of intention" as required by Sec. 44.05, and every person so soliciting must in all other respects comply with the provisions of this Article.

Sec. 44.10. Charitable Associations—Permission by to Solicit:

No person shall use the name of any association in charge of control of any charitable activity in any solicitation without having written permission from two of the officers of such association, to use its name or the name of or reference to such charitable activity, which written permission must be for a specific event or a specified period of time and a copy of such permission must be filed with the Department prior to any such use.

Sec. 44.11. Charitable Associations—Solicitor—Authorization, Exhibition of:

[fol. 28] No person shall solicit in the name of or on behalf of any charitable association unless such solicitor has:

(a) Written authorization of two officers of such association, a copy of which shall be filed with the Department; and which authorization and copy shall each bear a specimen signature of the solicitor; such written authorization shall expressly state on its face the period for which it is valid which shall not exceed ninety days from the date issued;

(b) Such authorization with him when making solicitations and exhibits the same on request to persons solicited or police officers or agents of the Department.

Sec. 44.12. Solicitation—Information Card:

No person shall solicit any contributions unless he exhibits an Information Card provided for in Sec. 44.03 of this Article and reads it to the person solicited or presents it to said person for his perusal, allowing him sufficient opportunity to read same, before accepting any contribution so solicited.

Sec. 44.13. Solicitation—Radio, Telephone, Telegraph:

No person shall solicit any contributions by printed matter or published article, or over the radio, telephone or telegraph, unless such publicity shall contain the data and information required to be set forth in the Informa- [fol. 29] tion Card. Provided, that when any solicitation is made by telephone, the solicitor shall present to each person who consents, or indicates a willingness to contribute, prior to accepting a contribution from said person, such Information Card or a true written copy thereof.

Sec. 44.14. Solicitations—Report—Time—Expenses—Uses:

Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close of any such solicitation or within 30 days after a demand therefor by the Department a report to the Department, stating the contributions secured from or as a result of any such solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed. Every such report shall be made on forms to be furnished by the Department, and signed by the persons or associa-

tion filing or obligated to file the Notice of Intention and such report, if made by any such association, shall be signed by at least two officers thereof. Provided, that when any such solicitation is made by any such association such report need be filed only by such association and not by an individual solicitor engaged in any such solicitation.

Sec. 44.15. Contributions—Receipt, Contents of:

[fol. 30] No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:

(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for.

Provided, however, that no receipt need be given or tendered if donation of money is made by placing of the same in a locked receptacle, of a kind previously approved by the Board, in such manner that it is impracticable to ascertain either the amount donated or the name of the donor, and if an inscription shall be conspicuously attached to such receptacle containing in legible writing a copy of such Information Card issued by the Department and the statement required to be set forth in the receipt hereinbefore in this Section referred to, except the state-[fol. 31] ments regarding such information card, and if such receptacle bears a number or other mark of identification, and if a written list showing by number the location or name of the solicitor in charge of each receptacle, if there be more than one such receptacle shall have been previously filed with the Department. Provided, further, that no receipt need be given for any donation of money in an amount less than $1.00.

Sec. 44.16. Certain Provisions not Applicable, When:

The provisions of this Article, except Sections 44.01 and 44.04, shall not be applicable to any solicitation made upon premises owned or occupied by the association upon whose behalf such solicitation is made, nor to any solicitation for the relief of any individual specified by name at the time of the solicitation where the solicitor represents in each case that the entire amount collected, without any deduction whatever, shall be turned over to the named beneficiary, nor shall they be applicable to any association soliciting contributions solely from persons who are members thereof at the time of such solicitation, nor shall they be applicable to solicitations made solely for evangelical, missionary or religious purposes. Provided, however, that in any case, where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the [fol. 32] Board is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case.

Sec. 44.17. Soliciting from Vehicles:

No person shall park or stand any vehicle on any street with the Central Traffic District, as said district is defined in Section 80.00, for the purpose of soliciting funds to any charitable institution, or otherwise.

Sec. 44.18. (Added by Ordinance No. 80,920, approved March 1, 1939) Telephone Solicitations.

(a) No person shall for pecuniary compensation or consideration conduct or make any solicitation by telephone for or on behalf of any actual or purported charitable use, purpose, association, corporation or institution.

(b) The provisions of Subsection (a) hereof shall not apply to any communication by telephone between persons personally known to each other.

Sec. 44.19 (Added by Ordinance No. 80,920, approved March 1, 1939)

[fol. 33] (1) Promoters.

No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without license from the Board so to do.

(2) Application.

To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application, the applicant shall set forth, in addition to such information as may be required by the Board:

(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter.

[fol. 34] (3) Bond.

(a) (As amended by Ordinance No. 81,618, approved Sept. 15, 1939). At the time of so filing with the Board an application for such license the applicant shall file and thereafter maintain with the Board a good and sufficient bond in the aggregate sum of Two Thousand Dollars ($2,000) running to the City of Los Angeles for the use and benefit of interested persons and parties, executed by the applicant and by two or more responsible sureties, or a surety company authorized to do business in the State

of California, to be approved by the Board. The total aggregate liability on said bond shall be limited to the payment of Two Thousand Dollars ($2,000). Said bond shall be conditioned upon the strict compliance, by the Principal, with the provisions of this Article and the payment of any direct pecuniary loss sustained, through any act of grand or petty theft on the part of the Principal, by any donor or by any person on whose behalf the funds or personal property were solicited or received by the Principal.

(b) Said bond shall remain in force and effect until said bond and undertakings in the solicitation of contributions by the promoter is cancelled by the sureties. The sureties may cancel said bond and be relieved of further liability thereunder by delivering thirty days' written notice to the Board. Such cancellation shall not affect any liability incurred or accrued thereunder prior to the termination of said thirty (30) day period.

[fol. 35] (c) Any person who sustains any injury covered by said bond, may in addition to any other remedy that he may have, bring an action in his own name upon said bond for the recovery of any damage sustained by him.

(d) Upon such action being commenced, such bond shall not be void upon first recovery thereon, but may be sued upon, from time to time until the whole of such penalty shall be exhausted. The Board may, in its discretion, require the filing of a new bond, and immediately upon the recovery in any action on such bond, and upon failure to file the same within ten (10) days in either case, the Board shall forthwith suspend such promoter's license to solicit.

(e) The time within which any action may be brought against a surety upon any bond filed hereunder may, by express provision of the bond to that effect, be limited to a period of two (2) years from and after the discovery, by the person aggrieved, of the act or default complained of.

(4) Fee.

For filing such application the applicant shall pay a fee of $25.00 to the Board.

...

(5) Investigation.

The Board shall examine such application and shall make such further investigation of the applicant and its or his affairs as the Board shall deem advisable. If from such examination the Board shall be satisfied:

(a) That the applicant is of good character and reputa-
[fol. 36] tion, or

That every managing officer or agent of the applicant if the applicant is a corporation, is of good character and reputation, or if the applicant is an unincorporated association, firm or partnership, each member thereof is of good character and reputation.

(b) That applicant has sufficient financial responsibility to carry out the obligations incident to any solicitation such applicant may make within the City of Los Angeles as such promoter and that all of the statements made in such application are and each of them is true and that neither the applicant nor any officer, agent or member of the applicant has violated any of the provisions of this Article or has engaged in any fraudulent transaction or enterprise, and that the applicant intends to conduct its business fairly and honestly, the Board shall issue to the applicant a license to solicit as a promoter within the City of Los Angeles, contributions; otherwise, the Board shall deny the application and refuse to issue a license, and shall notify the applicant of the decision of the Board.

Provided, however, that if the only ground for such refusal or denial is such that it does not substantially affect applicant's honesty and integrity and if the inability of the applicant to meet any requirement will not in any way interfere with a proper performance by the applicant of his duties as such promoter, the Board may, in its dis-
[fol. 37] cretion, waive such ground and grant the application; this proviso relates only to paragraphs (a) and (b) of this subsection.

(6) Revocation.

All licenses issued hereunder shall be subject to the condition that the applicant thereafter shall cease and desist from acting as a promoter within said City of Los Angeles when ordered so to do by the Board if the Board finds after a hearing, upon notice as provided in Section 22.02 of this Code, that any act or omission of such promoter or his

agents or employees in making any solicitation or in the conduct of the business of promoter within the City of Los Angeles is unfair, unjust, inequitable or fraudulent. The Board must suspend or revoke any such license if, after hearing upon notice, the Board shall find the existence of any of the grounds hereinabove enumerated for the denial of an application for a promoter's license; provided, however, that such suspension or revocation shall be discretionary with the Board if the only ground for such revocation is such that it does not affect the licensee's honesty and integrity, or his ability properly to perform his duties as a promoter.

(7) Termination:

Every such license shall terminate or expire at the end of the year terminating on the 30th day of June in which such license is issued.

(8) Funds.

No promoter shall commingle any contribution with the [fol. 38] promoter's own funds or property, or fail at any time to maintain and keep all contributions separate and apart from the promoter's own funds or property.

(q) (Added by Ordinance No. 81,618, approved Sept. 15, 1939) Solicitors:

(a) It shall be unlawful for any promoter to cause or permit any person for pecuniary compensation or consideration received or to be received by such person to solicit or receive on his behalf or at his instigation, under his direction or control or in his employment, any contribution unless such person shall be registered as a solicitor by the Board.

(b) No person shall be so registered as a solicitor unless he shall first appear personally before the Board and furnish satisfactory proof that he is a person of good moral character, that his reputation for honesty is good, and unless he first file with the Board and thereafter maintain a bond satisfactory to the Board in the sum of Five Hundred Dollars ($500.00), conditioned for the payment of any direct pecuniary loss which may be sustained by the promoter, by any donee, or by any person on whose behalf any contribution was solicited or received, through any act of grand or petty theft, committed by such person.

(c) The provisions of paragraphs (b), (c), (d) and (e) of subsection (3) above shall apply to bonds filed pursuant to this subsection.

(d) The Board shall collect a fee of One Dollar ($1.00) for each such registration.

[fol. 39] (g) The registrant must notify the Board in writing of any change of address and if the registrant be employed or engaged by more than one promoter, he must inform the Board in writing of such fact and of any subsequent termination or change of employment.

Pawn Brokers—Second Hand Dealers
L. A. Municipal Code—Ord. No. 77,000

As Amended to and Including Ordinance No. 84,732

Sec. 24.01. Pawn Brokers, Second Hand Dealers, Junk Dealers, Collectors.

(a) (As amended by Ordinance No. 79,314, approved March 3, 1938)

Definitions. For the purpose of this Section the following words shall mean:

"Junk Dealer" shall mean a person having a fixed place of business in this City who goes from house to house or from place to place gathering, collecting, buying, selling or otherwise dealing in any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.

"Junk Collector" shall mean a person having a fixed place of business in this City and engaging in, conducting, managing or carrying on the business of buying, selling or otherwise dealing in, either at wholesale or retail any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.

"Pawnbroker" shall mean a person engaged in, conduct-[fol. 40] ing, managing or carrying on the business of pawnbroking, or the business of loaning money for himself or for any other person upon personal property, or the business of purchasing articles of personal property and reselling or agreeing to resell such articles to the vendors or their assignees at prices agreed upon at or before the time of such purchase.

"Pawn Shops" shall mean any room, store, or place in which the business of a pawnbroker is carried on or conducted.

"Secondhand Dealer" shall mean a person engaging in, conducting, managing or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise.

None of the provisions of this Section shall apply to auto wreckers, dealers in used motor vehicles, or to secondhand book dealers.

(Added by Ordinance No. 83,898, approved December 26, 1940) "Trade-ins"—Tires and Batteries. The acceptance, sale or disposal of used automobile tires or automobile batteries taken in part payment for new tires or batteries shall not be deemed to constitute the doing of any business defined in this subsection.

(b) Permit Required. No person shall engage in, conduct, manage, carry on or deal in any business mentioned in subsection "a" of this Section without first applying for and receiving a written permit from the Board as hereinafter provided.

[fol. 41] (c) Requisites of Permits.

(1) Persons desiring to obtain a permit to conduct, manage or deal in any business mentioned in subsection "a" of this Section shall file an application in writing with the Board specifying by street and number the place where such business is proposed to be conducted or carried on; junk collectors having no fixed place of business shall specify in such application their residence by street number. The application shall be signed by the applicant and shall contain his residence address.

(2) Before receiving an application for any permit the Board shall require the payment of such fees as are hereafter specified.

(3) Upon receipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year.

(4) Persons operating under the provisions of this Section shall be required to secure an annual renewal of such permit commencing January 1st of the succeeding year in which such permit was granted.

(5) No person holding a permit to conduct, manage, carry on or deal in any business mentioned in subsection "a" of this Section shall buy, sell or otherwise deal in [fol. 42] secondhand jewelry, precious stones, precious metals (including old gold), watches or other similar secondhand merchandise without first applying for and receiving a special permit therefor from the Board in the manner provided in this Section for securing ordinary permits.

(d) Fees. The Board shall charge the following fees:

(1) Applications for permits other than provided for in this subsection shall pay the sum provided in Section 22.10;

(2) Applications for special permits, the sum of $50.00;

(3) Applications for annual permit renewal, the sum of $25.00;

(4) Applications for changing location of place of business for which a permit has been granted, the sum of $10.00;

(5) Change of ownership, the sum of $10.00, to be applicable only in cases where the new owner is already operating under a permit issued pursuant to provisions of this Section.

(e) Compliance with Laws:

(1) The Board shall not grant any permit provided for in this Section to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought.

(2) Persons applying for or obtaining permits under the provisions of this Section shall comply with the provisions of this Section.

(f) Revocation of Permits. Any permit issued under [fol. 43] the provisions of this Section may be revoked or suspended upon the grounds provided for in this Section:

(1) Grounds. If persons holding permits under the provisions of this Section shall violate any of the provisions of this Section or any provision of any other ordinance, or any law relating to or regulating any such business, or shall conduct or carry on such business in an

unlawful manner, the Board, in addition to any other penalties provided by this Code, shall revoke such permit issued to such person;

(2) Procedure. Permits granted pursuant to this Section shall be revoked only in the manner provided in Section 22.02 of this Code;

(3) Reissuance of Revoked Permit. No permit shall be granted to any person to conduct, manage, carry on or deal in any business mentioned in subsection "a" of this Section whose permit has been revoked by the Board until six (6) months have elapsed after such revocation.

(g) Report of Purchases.

(1) Persons described in subsection "a" of this Section shall secure blank report forms from the Chief of Police. Such reports shall be made out and delivered to the Chief of Police each day before 10 A. M. and shall contain the following data:

(a) A full, true and complete report of all goods, wares, merchandise or things received on deposit, pledged, purchased or received during the day preceding the filing of such report.

[fol. 44] (b) The hour of the day such article was received, pledged or purchased.

(c) The true name and address of the party making the sale, delivery or pledge as nearly as the same is known to or can be ascertained by such person together with a description of such party which shall include his height, age, sex, complexion, style of dress, color of mustache, if any, and if lacking, such fact shall be noted.

(d) The number of the pawn ticket if a pledge is involved, and the amount loaned or pledged.

(e) Each article pledged, received or purchased shall be described. If such article is engraved or contains any settings, the description thereof shall include such number, figure, word or initial engraved thereon and shall show the kind of number of settings.

(2) Such blank report forms shall bear a caption providing blank spaces in which shall be written or printed, the date of such report, the name and place of business of the person making the same and the hour of day when

the same is received by the Chief of Police. Such forms shall be so printed and subdivided as to contain spaces with proper captions for the information required by the provisions of this subsection. A copy of this Section shall be printed upon the back of each such blank form.

(3) Every junk dealer or persons engaged in the business of purchasing scrap metals for the purpose of [fol. 45] reselling, smelting or refining such metal must comply with provisions of subdivision (1) of this subsection, except that where purchases are made from a junk collector in lieu of the description required in subsection "1(c)" of this subsection the true name and city license number of such junk collector shall be sufficient.

(h) Record of Purchases. Persons defined in subsection "a" of this Section shall keep a complete record of all goods, wares, merchandise and all things pledged to or purchased or received by him, which record shall contain all of the matters required to be shown in the reports referred to and described in subsection "g" of this Section. Such records of all articles pledged, purchased or received by such persons shall be open at all times during business hours to the inspection of any member of the Police Department.

(i) Filing of Reports. The Chief of Police shall file in a secure place in his office all reports and records received pursuant to the terms of this Section, and the same shall be open to inspection only by members of the Police Department or upon an order of a court of competent jurisdiction made for that purpose. Every report and record required by the terms of this Section to be filed or kept shall be written or printed in a clear and legible manner entirely in the English language.

(j) Signs. Persons defined in subsection "a" of this Section shall maintain on the premises where said business is located, a sign plainly printed in the English [fol. 46] language of sufficient size so that the same may be easy to read from the sidewalk in front of said place of business. Such sign shall state the business in which such person is engaged. If said business is located in an office building the sign shall be placed on the door of said office. If the business is located in a department of any building the sign shall be placed at the entrance to said department.

(k) Sale of Goods by Dealers.

(1) Pawnbrokers or secondhand dealers shall not sell or otherwise dispose of any article or thing within twenty-one (21) days after such article or thing has been purchased or received by such pawnbroker or secondhand dealer.

(2) Junk dealers or junk collectors shall not sell or otherwise dispose of any article or thing within three (3) days after such article or thing has been purchased or received by such junk dealer or junk collector.

(3) Junk dealers or other persons engaged in the business of purchasing scrap metals for the purpose of reselling, smelting or refining the same, shall retain and keep in a separate place on their premises the entire purchase of each day. Each day's purchase shall be kept in such place in its original condition for a period of three (3) days after the purchase or receipt thereof, and shall at all times be open to the inspection of the Police Department.

(1) (As amended by Ord. No. 87,342, approved Jan. 21, 1943).

Hours of Business. No person operating, managing, or fol. 47] carrying on any business defined in Subsection (a) hereof shall accept any pledge, or loan money upon personal property, or purchase or receive any article, or carry on or transact such business in any manner during the hours or days hereinafter specified, nor shall any person carry on or transact any business of whatever character, or buy or sell any article new or used, at any place of business for which a junk dealer's permit, a pawnbroker's or pawnbroker's or pawnshop permit, or a secondhand dealer's permit is issued, during any of the following hours or days, to-wit:

(1) Between 6:00 o'clock P.M. and 8:00 o'clock A.M. on any day from Monday to Friday, inclusive.

(2) Between 7:00 o'clock P.M. Saturday and 8:00 o'clock A.M. of the following Monday, except, however, that any such place of business may be kept open between 7:00 o'clock P.M. and 9:00 o'clock P.M. on Saturday, provided that the only business done therein during such

overtime hours be that of selling goods, wares and merchandise or other personal property;

(3) On any of the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas;

Except, however, that from December 14th to December 24th inclusive, excluding Sundays, any such place of business may be kept open until 10:00 P.M., provided the only business done therein during such overtime hours be [fol. 48] that of selling goods, wares and merchandise, or other personal property.

(m) Overlapping Businesses. If any person shall engage in, conduct, manage or carry on at the same time more than one of the businesses defined in subsection "a" of this Section such person shall be deemed to be engaging in, conducting, and carrying on each such business separately and apart from the other business; and such person shall comply in all respects with the provisions of this Section relating to such business and no person shall fail, refuse or neglect otherwise so to do.

(n) Compliance with Section. No person engaging in, conducting, managing or carrying on any of the businesses defined in subsection "a" of this Section shall fail, refuse or neglect to file any report in the form, in the manner, at the time and otherwise in all respects in accordance with the requirements of this Section; or fail, refuse or neglect to keep records in the form and manner required by this Section; or fail, refuse or neglect to exhibit to a member of the Police Department immediately upon demand for inspection, any record of any goods, wares, merchandise, articles or things pledged to, or purchased or received by such person.

(o) Exemptions.

(1) (As amended by Ord. No. 82,638; appr. Apr. 3, 1940).

The provisions of subsection (g) shall not apply to the receipt or sale of a secondhand article by person who receives or purchases such article from any other person [fol. 49] when such other person has made the required report to the Chief of Police and shall have held the articles for the length of time as provided in subsection (k) hereof.

(2) The provisions of subsection (g), (h), and (k) of this Section shall not apply to the purchase or sale by junk dealers or junk collectors of any rags, bottles, other than milk or cream bottles, secondhand sacks or bags, other than cement sacks or bags, barrels, cans, shoes, lamps, stoves or household furniture with the exception of all musical instruments, typewriters, accounting machines, adding machines, check writing machines, comptometers or other similar equipment or the purchase or sale of sacks, bags, or rags other than cement sacks or bags.

(p) (Added by Ord. No. 83,646, approved November 18, 1940) Claims to Possession of Stolen Property.

(1) In all cases where a claim is made to property pawned with or sold to a person claiming to be the owner thereof and asserting that the property was stolen, the Board shall, after a hearing upon notice, determine the validity of such claim and the immediate disposition which should be made as to the possession of the claimed property, as hereinafter provided.

(2) If the Board shall determine that such property was stolen, that the claimant is the owner thereof, and that there is no collusion between the claimant and the person by whom such property was stolen, the Board shall direct that such property be returned forthwith to [fol. 50] the claimant without compensation of any kind being paid therefor.

(3) In the event such direction be disobeyed, the permit under which such pawnbroker, secondhand dealer, junk collector or junk dealer is permitted to conduct his said business may be revoked or suspended by the Board without further hearing.

(4) The Board may designate any member of the Police Department to hear the evidence at any or all hearings that may be held hereunder, and to report his findings thereon to the Board; but in all cases, the Board shall determine the disposition of the property.

(5) If, prior to the determination by the Board upon any claim made hereunder, an action at law is brought by or against the person in possession of the property to establish the ownership of, or the right to possession of, the property, the Board shall upon notice thereof suspend proceedings upon the claim.

[fol. 51] IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

[Title omitted]

POINTS AND AUTHORITIES IN SUPPORT OF PETITION

1. It is Settled Law That an Attempt to Enforce a Law Making Certain Acts a Criminal Offense Will be Enjoined if The Law is Invalid and Its Enforcement Will Injure Plaintiff's Property Rights. (14 Cal. Jur. p. 213.)

2. *Where a Court Is Proceeding to a Trial For The Violation of a Void Ordinance Or Unconstitutional Law Prohibition Is the Proper Remedy to Prevent.*

Douglas v. Jeanette, Adv. Ops. Vol. 87, p. 856.
Monterey Club v. Superior Court, 48 Cal. App. (2d) 131.
Brock v. Superior Court, 12 Cal. (2d) 605.
Brock v. Superior Court, 11 Cal. (2d) 682.
Wheeler v. Herbert, 152 Cal. 228.
[fol. 52] Arfsten v. Superior Court, 20 Cal. App. 269.
Ex Parte Hayter, 16 Cal. App. 225.
Scofield v. City of Los Angeles, 120 Cal. App. 240.

3. Prohibition Will Lie To Prevent a Retrial Of a Criminal Case Where it Appears That the Court is Without Jurisdiction to Try and Convict.

Oliver v. Superior Court, 92 Cal. App. 94.
Huntington v. Superior Court, 5 Cal. App. 288.

4. A State Cannot Impose a Charge for the Exercise of The Right of Religion Which Privilege and Right is Granted by the Federal Constitution.

Murdock v. Penn., 87 L. ed. 827.
Cantwell v. Connecticut, 310 U. S. 296.
In re Darte, 172 Cal. 47.

5. The State Can No More Exact a License Fee or Tax From a Solicitor for a Charitable Activity than for the Exercise of the Right of Religion. Both are Protected by the Constitution.

In re Darte, 172 Cal. 47.

6. The right to Engage in Religious or Charitable Activities is not the Subject of State Regulation, although a

Mere Registration-Identification Ordinance May be Valid Where Only a Nominal Fee is Charged.

Murdock v. Pennsylvania, supra.
Cantwell v. Connecticut, supra.

[fol. 53] 7. *The Fact That a Solicitor Receives Some Profit From His Work Cannot Transform Evangelism Into a Commercial Enterprise.*

Murdock v. Pennsylvania, supra.
In re Darte, supra.

8. To Impose Prior Restraints On The Colporteurs or Solicitors for Religious Groups is to Take From Them a Vital Support and an Ordinance Which Does so is Void.

Murdock v. Pennsylvania, supra.

9. An Ordinance Which Empowers a Board or Officer to Decide Whether Activities of a Religious Group are or are not Religious or Which Requires That All Contributions Secured by Solicitors shall be Devoted to Purely Religious Purpose Contravenes the Federal Constitution.

Murdock v. Pennsylvania, supra.

10. The Constitutionality of an Ordinance Purporting to Exercise the Police Power is Tested by its Operation and Effect as Construed and Applied by Officers Authorized to Enforce it.

Murdock v. Pennsylvania, supra.
Cantwell v. Connecticut, supra.
Near v. Minn. ex rel. Olson, 283 U. S. 697.
In re Darte, supra.

11. *The State Cannot, by Legislation, Make a Book Agent out of a Bible Selling Solicitor or by Legislative Fiat Convert a Second-hand Store Operated in Support* [fol. 54] *of Charity or Religion Into a Commercial Business or a Junk Shop, or Distort a License Tax or a Permit by the Device of Employing Other Terms.*

Murdock v. Pennsylvania, supra.
In re Darte, supra.

§ 12. *The Equal Protection of the Laws Clause Prohibits Legislation Which Favors a Particular Portion of a Class*

Even as it Requires Equal Exemptions of All Similarly Situated.

Frost v. R. Com., 271 U. S. 583, 592.
Smith v. Cahoon, 283 U. S. 553, 566.
In re Darte, 172 Cal. 47.

13. Article VI, Sec. 25, Constitution of California forbids That Any Classification be Arbitrarily Made.

Martin v. Sup. Ct., 194 Cal. 93.
In re Sumida, 177 Cal. 388.
Deyoe v. Sup. Ct., 140 Cal. 476.
Pasadena v. Stimson, 91 Cal. 231.

14. A Statute, Valid on its Face, May be Unconstitutionally Applied, and When This is Done One Injured Thereby May Enjoin its Threatened Enforcement.

Yick Wo v. Hopkins, 118 U. S. 356, 373.
Brock v. Sup. Ct., 12 Cal. (2d) 605.
Bueneman v. Santa Barbara, 8 Cal. (2d) 405.

[fol. 55] 15. Corporations Are Persons Within the Equal Protection Clause as Well as the Due Process Guaranty.

Liggett Co. v. Baldridge, 278 U. S. 105.
Power Mfg. Co. v. Saunders, 274 U. S. 490, 496.
Santa Clara v. S. P. R. Co., 118 U. S. 394.

[fol. 56] [File endorsement omitted.]

[fol. 57] IN THE SUPREME COURT OF CALIFORNIA
L.A. No. 18946

[Title omitted]

ANSWER TO PETITION FOR WRIT OF PROHIBITION—Filed April 3, 1944

Comes now The Municipal Court of the City of Los Angeles, respondent in the above entitled action, and answering the petition filed in such action admits, denies and alleges, as follows:

I

Respondent denies generally and specifically each and every allegation contained in Paragraph II of said petition.

II

Denies generally and specifically each and every allegation contained in Paragraph IV of said petition.

III

[fol. 58] In answer to Paragraph V of said petition, petitioner admits the allegations therein contained commencing with the words "That at all times" at the beginning of said paragraph, and continuing down to and including the words "and made a part of this petition by reference."

Respondent denies generally and specifically the allegations contained in said Paragraph V commencing with the words "which said Ordinance," following the words "by reference," and continuing down to and including the words "and the issuance of a license or permit by said city to so solicit."

IV

In answer to Paragraph VI of said petition, respondent admits that the provisions of Ordinance 77,000 embodied in Sections 44.02 to 44.15, inclusive, do not apply to persons who solicit donations which are to be used solely for religious, missionary or evangelical purposes.

Respondent denies generally and specifically each and every allegation contained in said paragraph not hereinbefore in this paragraph admitted to be true.

V

In answer to Paragraph VII of said petition, respondent admits that Section 44.09 of the Los Angeles Municipal Code reads as follows:

> "(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon [fol. 59] any public street, sidewalk or way, or in any public park or in any publicly owned or controlled place, except by the express written permission of the Board.
>
> "(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box or receptacle in any place immediately abutting upon any public sidewalk or way, or in any place of business open to the public, or in any room, hallway, cor-

ridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a 'notice of intention' as required by Sec. 44.05, and every person so soliciting must in all other respects comply with the provisions of this Article."

Respondent denies generally and specifically each and every allegation contained in said Paragraph VII not hereinbefore in this paragraph specifically admitted.

VI

Respondent denies generally and specifically each and every allegation contained in Paragraph VIII of said petition.

VII

[fol. 60] Respondent denies generally and specifically each and every allegation contained in Paragraph IX of said petition.

VIII

Respondent denies generally and specifically each and every allegation contained in Paragraph X of said petition.

IX

Respondent denies generally and specifically each and every allegation contained in Paragraph XIV of said petition.

X

Respondent denies generally and specifically each and every allegation contained in Paragraph XV of said petition.

XI

Respondent denies generally and specifically each and every allegation contained in Paragraph XVI of said petition.

XII

Respondent denies generally and specifically each and every allegation contained in Paragraph XVII of said petition.

XIII

Respondent denies generally and specifically each and every allegation contained in Paragraph XIX of said petition.

[fol. 61] WHEREFORE, respondent The Municipal Court of the City of Los Angeles prays, that the Alternative Writ of Prohibition, heretofore issued in this action, be dissolved; that a Peremptory Writ of Prohibition be denied; that respondent be permitted to go hence with its costs, and that it have such other and further relief as may be proper in the premises.

Ray L. Chesebro, City Attorney, Donald M. Redwine, Assistant City Attorney, John L. Bland, John L. Bland, Deputy City Attorney, Attorneys for Respondent.

[fols. 62-64] [File endorsements omitted]

[fol. 65] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

DEMURRER TO PETITION FOR WRIT OF PROHIBITION—Filed April 3, 1944

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court:

Comes now the Municipal Court of the City of Los Angeles, respondent in the above entitled action, and demurs to the petition heretofore filed in the District Court of Appeal and later transferred to the above entitled court upon a petition for hearing in such court, and, as grounds for demurrer, alleges:

I

That said petition fails to state facts sufficient to constitute a cause of action for prohibition of this respondent.

[fol. 66] II

That said petition is uncertain in the following respects, to wit:

It cannot be determined from examination of paragraph II of said petition whether charities carried on by the

corporation petitioner are part of petitioner's religious activities and worship, or whether such activities are carried on separate and apart from the religious worship conducted by such petitioner;

It cannot be determined from examination of paragraph III of said petition wherein or how the conduct of charitable enterprises constitutes a tenet of the petitioners' religion;

It cannot be determined from paragraph VI of such petition wherein or how charity is an essential activity or integral part of missionary, evangelical or religious activity of the petitioners;

It cannot be determined from said petition, and particularly from paragraphs VII and VIII thereof, wherein or how the construction placed upon the ordinance named in said petition by persons charged with the enforcement thereof tends to render such ordinance invalid;

It cannot be determined from said petition wherein or how that portion of Ordinance 77,000, Section 24.01, set out in said petition in Exhibit A, pages 22 to 33, inclusive, and made a part of said petition by reference, does in any manner interfere with or hinder the petitioners in their religious activities.

III

That said petition is unintelligible for the same reasons which render it uncertain.

[fols. 67-68] IV

That said petition is ambiguous for the same reasons which render it uncertain.

Wherefore, respondent prays that its demurrer be sustained without leave to amend; that the proceedings against this respondent be dismissed, and that it have judgment for its costs.

Ray L. Cheseboro, City Attorney, Donald M. Redwine, Assistant City Attorney, John L. Bland, Deputy City Attorney, Attorneys for Defendant and Respondent, The Municipal Court of the City of Los Angeles.

I hereby certify that I have read the foregoing demurrer and that the same is not interposed for the purpose of

hindrance or delay, and that I believe the same to be meritorious and well taken.

John L. Bland.

[fol. 69] In the Supreme Court of California

(Title omitted)

Points and Authorities in Support of Demurrer

Statement of Issues of Law

I

The only issues presented by the alternative writ in the case appears to be whether the ordinance involved is in contravention of:

(1) Article I, Section 21 of the California Constitution, or

(2) The Fourteenth Amendment to the Federal Constitution.

It appears from the petition filed in this proceeding that the petitioners limit their claim of invalidity to the sections above named.

[fol. 70] We shall discuss the constitutional provisions named in the sequence set out above.

Although there are two petitioners named in the action it seems apparent that Murdock is the whipping horse or guinea pig brought in to enable the corporation petitioner to secure a decision upon its rights as a religious organization to solicit funds free from the regulations imposed by the ordinance set out in the petition.

Printed copies of the ordinance provisions involved were affixed to respondent's answer to petition for hearing in this court and are available for ready reference. Additional copies will be furnished if desired.

For what we trust will be helpful to the court, paragraphs applicable to the different propositions of law involved will be separately numbered.

[fol. 71] Subdivision A

The Ordinance Does Not Contravene the Restrictions of Section 21 of Article I of the State Constitution.

A-I

In so far as Section 21 of Article I of the State Constitution, hereafter referred to as "Section 21," is concerned, it appears that petitioners' only claim is contained in paragraph VIII of the petition, wherein they allege that "as construed and applied" by the Board all religious activities of churches, etc. are construed as being for charitable purposes, thereby subjecting such organizations to the regulatory provisions of the ordinance. The further claim is made therein that, because of the provision in Section 44.09 whereby certain organizations may be exempted from certain regulatory provisions of the ordinance, the entire ordinance is invalid because of infringement of such Section 21.

A-II

We find ourselves in a position where we cannot tell with certainty whether petitioners' claim of invalidity is based upon (a) the Board's construction of the ordinance as inclusive of all religious organizations, or (b) because Section 44.09 permits the Board to administer the law unfairly.

A-III

Section 21 requires equal treatment of all persons. Such provision has been uniformly interpreted as requiring only uniformity of treatment of all persons similarly situated.

People v. Twelfth District Court, 17 Cal. 547;
Martin v. Superior Court, 194 Cal. 93.

[fol. 72] A-IV

The provisions of Section 21 apply to actions by the state (and municipalities) and have no reference to actions by individuals.

Los Angeles Investment Co. v. Gary, 181 Cal. 680.

It follows that the interpretation placed upon the law by the Board is not the criterion by which we must measure the validity of the ordinance.

The definition of "charitable" includes the words "philanthropic," "social service," "benevolent," "patriotic, either actual or purported." In our opinion the definition does not include religious organizations engaged solely in spreading the tenets of their belief by teaching or preaching, either orally or in writing. On the other hand, it includes all solicitations made for the purposes described, irrespective of whether such solicitations are made by religious or nonreligious organizations. Our conclusion is supported by one of the series of exceptions in Section 44.16.

In so far as the ordinance touches the activities of a religious organization in its charitable works, it regulates the *practice* of its religion as distinguished from the religious belief of its members. (See *Davis v. Beason*, 133 U. S. 333, 33 L. Ed. 637.)

A-V

An act applying equally to all persons in a given class constitutes equality of law within the meaning of the Constitution.

State Board of Tax Commissioners v. Jackson, 283 U. S. 527, 75 L. Ed. 1248;
Southern Ry. Co. v. Greene, 216 U. S. 400, 54 L. Ed. 536;
Maxwell v. Bugbee, 250 U. S. 525, 63 L. Ed. 1124.

[fol. 73]

A-VI

The provisions of the ordinance apply equally to all persons soliciting for any of the purposes defined as charitable and come within the rule of classification established by the courts of this State and the United States Supreme Court. Likewise, the provisions of Section 44.09 apply equally to all persons in the classifications therein made. The provision allowing the Board to exempt some persons from some of the provisions of the ordinance confers an equal right or privilege upon all persons coming within the purview of the section to seek exemption. Whether the Board has arbitrarily exercised such power presents a question not involved herein. It is not claimed that the Board has arbitrarily granted exemptions to others and denied them to these petitioners, as was the situation in *Yick Wo v. Hopkins*, 118 U. S. 356, 30 L. Ed. 220. It

does not appear by the petition that the Board has ever exercised the power conferred by Section 44.09 or that these petitioners have not been given equal privileges upon application therefor.

A-VII

Before discussing the effect of such provision we point out that, upon the record before the court the petitioners are not entitled to challenge the validity of Section 44.09. Only those affected by a discrimination may raise the question of validity of a statute.

Murphy v. California, 225 U. S. 623, 56 L. Ed. 1229;

People v. Globe Grain & Milling Co., 211 Cal. 121.

[fol. 74]

A-VIII

The equal protection clause means that the rights of all persons must rest upon the same rule under similar circumstances.

National Candy Co. v. Federal Trade Comm., 104 Fed. (2d) 999,

in which appellant unsuccessfully urged that a law which permitted the Commission to enforce a rule of conduct against it not enforced against all its competitors, amounted to unequal protection.

A-IX

Though exemption is clear discrimination, statute is not invalid unless arbitrary.

Schwartzman v. Stahl (D. C. Mo.), 60 Fed. (2d) 1024.

A-X

It is only where enforcement agency exercises discretionary power *arbitrarily and unjustly* that enforcement of valid regulation becomes violative of the equal protection clause.

Thompson v. Spear, 91 Fed. (2d) 430; certiorari denied: 302 U. S. 762, 82 L. Ed. 592.

A-XI

It does not appear from the allegations in the petition that the petitioners, or either of them, have ever requested

from the Board an exemption under subsection (a) of Section 44.09. There are assuredly no allegations that the Board has denied to petitioners the privileges of Section 44.09 and given such privileges to others.

[fol. 75] A-XII

The contention that the section is discriminatory is purely speculative. On its face it treats all persons similarly situated in the same manner.

People v. Globe Grain & Milling Co., supra, 211 Cal. 121.

As pointed out in the case last cited, no contention is made that there has been actual discrimination in the granting of exemptions. The results claimed by the petitioners are speculative only.

A-XIII

Furthermore, we know of no case, and petitioners cite us to none, which holds that anyone has a vested right to solicit money or other property upon the streets of a municipality to be used for charitable purposes. The subject of solicitation of funds by religious organizations as a right vouchsafed to them will be discussed elsewhere herein. Suffice it to say at this point that, unless such right arises because of some provision of the Constitution, other than Section 21 of Article I, it does not exist.

A-XIV

Assuming, for the purpose of argument only, Section 44.09 to be void in its entirety, such assumption does not aid petitioners. The only effect of such validity would be to leave the other provisions of the ordinance in effect thereby requiring that all persons file the statement provided for by Section 44.05 and comply with other provisions relative to display of information cards.

[fol. 76] Subdivision B

The Ordinance Does Not Infringe Upon Petitioners' Freedom of Religion.

B-I

It has long been, and still is, the rule that though statutes may not undertake to control one's religious beliefs, they may circumscribe the practice of such beliefs.

Davis v. Beason, supra, 133 U. S. 333, 33 L. Ed. 637;
Cantwell v. Mass, 310 U. S. 296, 8 L. Ed. 1213;
Reynolds v. U. S., 98 U. S. (8 Otto) 145, 25 L. Ed. 244.

B-II

The state may prevent acts which tend to interfere with orderly government even though such acts be done in the name of religion.

Cox v. New Hampshire, 312 U. S. 569, 85 L. Ed. 1049;
Chaplinsky v. New Hampshire, 315 U. S. 568, 86 L. Ed. 1031;
Prince v. Commonwealth, ... U. S. ....., 88 L. Ed. (Adv. Op.) 403.

B-III

The state may protect its citizens from fraudulent solicitations by means of provisions for registration, and regulate the time and manner of solicitations in the interest of public safety, peace, comfort or convenience.

Cantwell v. Mass, supra, 310 U. S. 296, 84 L. Ed. 1213;
Murdock v. Penn., 319 U. S. 105, 87 L. Ed. 1292.

[fol. 77] B-IV

Examination of the ordinance involved in this proceeding discloses that, in order for an organization interested in the support of a charitable enterprise to proceed with solicitation for funds to support such enterprise, it is only necessary that it file a statement showing the purpose of such solicitation and the use to which the funds will be put; a showing of the need for funds; the character and

method of such proposed solicitation; the probable expenses of such solicitation, together with other information which would inform the public concerning facts tending to enlighten prospective donors concerning the use to which donations would be devoted. (Sec. 44.05, Los Angeles Municipal Code.) Thus the organization registers as one desiring to seek gifts from the public.

B-V

Having so registered, the organization must file copies of contracts with agents, etc. (Sec. 44.06, Los Angeles Municipal Code.) Certainly the public is entitled to know whether fifty, seventy-five or ninety per cent of the money it supposedly gives to an orphan asylum goes to solicitors. No honest charitable enterprise could well object to furnishing such information. A dishonest organization is in no position to insist upon a right to impose upon the public.

B-VI

After filing the statements required by Sections 44.05 and 44.06, there must be secured from the Commission an information card showing certain information, as set out in subsection (d), Section 44.03, and a solicitor must exhibit such card to prospective donors. (Sec. 44.12, Los Angeles Municipal Code.) We apprehend that no honest [fol. 78] person, genuinely interested in promoting the welfare of a charitable project, could refuse to disclose the information contained upon such cards. If the cause be worthy such cards constitute an eloquent appeal for gifts.

B-VII

Several other sections in the ordinance between Sections 44.01 and 44.15 are regulatory in their nature. They apply for the most part to the conduct of solicitors who have first complied with the provisions of the sections heretofore discussed. It does not appear to us that those sections are of such importance in this case as to justify an extension of the points and authorities. It is respondent's position that the provisions specifically discussed are valid regulations and that until such time as the petitioners have complied with such regulations they are not in position to challenge the validity of such other provisions.

B-VIII

In paragraph VIII of their petition petitioners allege, in effect, that the Board charged with the duty of administering the provisions of the ordinance under consideration construes the ordinance as authorizing such Board to determine whether or not any particular solicitation is or is not religious, and to grant or deny an application according to such determination. Although the rule is that the construction given to a statute by an administrative board is entitled to much weight, such rule does not apply when it appears that the administrative agency has used an interpretation wholly at variance with the language of the act. We find no language which gives the Board any discretion except to grant exemptions from certain requirements.

[fol. 79] As a condition precedent to the waiver of certain requirements it must be made to appear that the statement required by Section 44.06 has been filed; that general publicity to the drive for funds has been given, and that the solicitors are to work without compensation. (Subsection (f), Sec. 44.02.) There is nothing in such section or in any other section which authorizes the Board to inquire into the matter of religion. There is nothing in the ordinance which authorizes or purports to authorize the Board to issue or deny a permit to solicit. Any person who files the statement required by Section 44.05 is entitled to receive an information card upon complying with the provisions of Section 44.06. The issuance of cards in proper cases is a duty imposed by law upon the Board. A refusal to issue such cards would be overcome by a writ of mandate. We feel sure that in the absence of almost positive showing that the purported scheme was fraudulent, no court would refuse a writ.

B-IX

Under the provisions of the ordinance the only time the question of religion can enter into the matter of solicitation is in consideration of whether a person comes within the exceptions found in Section 44.16, and in particular the provision exempting solicitations solely for missionary, evangelical or religious purposes. As to such question the Board has no authority to decide whether or not a particular person or organization comes within the exception.

The person wishing to make solicitations must determine for himself in the first instance whether he comes within such exception. He is not required to ask the Board. If, however, he concludes that he comes within the exception, he proceeds at the peril that some court (not the Board) [fol. 80] may conclude that his activities are beyond the scope of the exemption and that he is guilty of a misdemeanor.

Perhaps in the past persons wishing to solicit for some project have inquired of the Board or its secretary whether or not they would have to file a statement and otherwise comply with the provisions of the ordinance. It may be that some member of the Board, or the secretary, has told such inquirers that the Board considers certain persons as coming within the exception and others as being without the exception. Any such statement can be an expression of opinion only. If the inquirer concludes he is within the exception he can proceed, subject only to risk of conviction if a court fails to see eye to eye with him.

The most that can be said in regard to any interpretation given by the Board is that it constitutes a statement that, so far as the Board is concerned, persons coming within the Board's conception of the outer limits of the exception will not be prosecuted for solicitation without filing a statement and otherwise complying with the ordinance. In this connection we point out that, one who in fact comes within the exception has no interest in the validity of the ordinance as it applies to others.

Whether petitioner Murdock comes within the exception is a question of fact for a trial court. He has been convicted twice and each conviction reversed on account of error occurring in the trial. Until such time as he stands convicted he is not in position to urge the invalidity of the ordinance, unless he admits that, at the time named in the complaint, he was not engaged in soliciting solely for religious, missionary or evangelical purposes. Because the lower court has jurisdiction to determine the fact of [fol. 81] whether he was or was not engaged in such exempted endeavor, it cannot be exceeding its jurisdiction in again placing him on trial. Reversals of judgment of conviction do not deprive the trial court of jurisdiction to again try the action.

B-X

In paragraph V of the petition, complaint is made of the provisions of Section 44.18 being applicable only to promoters and their agents, although such section is not specifically named by the petitioners. Such section applies only to promoters, that is, to persons who are engaged in the *business* of soliciting subscriptions for charitable enterprises. (Sec. 44.01, Los Angeles Municipal Code.) It does not appear from the petition that either of the petitioners is a promoter, for which reason they are not in position to challenge the validity of the section named. We therefore see no reason for entering into an extended discussion of the section. Suffice it to say that we see no constitutional objection to a provision whereby one wishing to engage in the business of soliciting donations for charitable organizations, in which such solicitor has no interest other than a purely commercial one, should not be required to secure a permit to engage in such business in the city and to post a bond insuring his honesty. Such provision does not impinge upon religious liberty. However broad may be the outer limits of the field of religious liberty, the matter of engaging in business for profit does not come within those limits.

[fol. 82] Subdivision C

The Petition Is Uncertain

C-I

Although we consider the petition uncertain for numerous reasons set out in detail in our demurrer, we shall avoid unduly extending these points and authorities by a discussion of each instance of uncertainty specified. We do not, however, thereby waive any of the specifications.

One specification merits particular attention. We refer to the allegations contained in paragraph II of the petition. In the first part of the paragraph petitioners attempt to allege that their activities are entirely religious, missionary or evangelical. If in fact such is the extent of their activities they are entirely exempt from the regulation provided by the ordinance. However, in the last part of the paragraph appears an allegation concerning "incidental" charitable activities. What petitioners mean

by such language is far from clear. Are such activities outside the sphere of religious activities and carried on merely as an "incidental" occupation? Or are they a part of their religious belief? As we view it, the question of whether petitioners are engaged solely in religious, etc. activities is a question of fact within the jurisdiction of the Municipal Court.

Assuming but not conceding that this court has the power to determine in this action whether the activities of the petitioners are limited to those bringing them within the exception, and assuming that upon the taking of testimony this court should decide that they are so conducting themselves, it follows that the validity of the ordinance as it may affect others not within the exception is not before the court.

[fol. 83] It is likewise patent that, whatever might be the decision of this court upon a given set of facts, it could not prohibit the lower court in some new action from determining for itself whether, under different circumstances, the petitioners come within the provisions of the ordinance. Were it otherwise it would open the door to fraud; an organization could confine its activities to matters within the exception and secure a judgment in its favor. Thereafter it might change its scheme of operation and plead the judgment in defense.

The respondent has no objection to having this or any other court outline the power of regulation which the city has over solicitations for charity. It would, however, like petitioners to "get off the fence" so that the decision, whatever it may be, will be something more than mere dictum. We have enough of that in *Ex parte Dart*, 172 Cal. 47.

Conclusion

The respondent briefly restates its contentions, as follows:

(1) Persons coming within the exceptions in Section 44.16 of the Los Angeles Municipal Code may not question the validity of the ordinance as it is applied to others.

(2) The ordinance constitutes a valid exercise of the police power. It constitutes a means of registration of persons engaged in soliciting donations, and prescribes

reasonable regulations governing the conduct of solicitations.

(3) The ordinance does not confer power, arbitrary or otherwise, upon the Board to deny to anyone the right to solicit for charitable purposes.

[fols. 84-87] (4) In so far as it confers power upon the Board to waive compliance with certain regulations, such action must be taken in the exercise of a wise discretion. There is no allegation that the Board has acted arbitrarily, or that it has denied to petitioners privileges granted to others under similar circumstances.

(5) If the exception found in Section 44.16 of the Los Angeles Municipal Code be considered as establishing a religious test and for that reason invalid, such fact does not invalidate the remainder of the ordinance. Declaring such provision invalid would place the petitioners upon the same footing as other persons soliciting funds from the public.

The ordinance as thus construed would still come within the limits of control of religious organizations as outlined in the various decisions of the United States Supreme Court.

Respectfully submitted, Ray L. Chesebro, City Attorney, Donald M. Redwine, Assistant City Attorney, John L. Bland, Deputy City Attorney, Attorneys for Defendant and Respondent, The Municipal Court of the City of Los Angeles.

[fol. 88] IN THE SUPREME COURT OF CALIFORNIA

IN BANK

[Title omitted]

ORDER GRANTING HEARING AFTER JUDGMENT BY DISTRICT COURT OF APPEAL AND ORDER, RE ISSUANCE OF ALTERNATIVE WRIT OF PROHIBITION—January 27, 1944

Petition for hearing Granted and cause transferred to this Court. Let an alternative writ of prohibition issue, returnable before this Court at its courtroom in Los Angeles, on June, 1944 calendar.

Dated January 27, 1944.

Gibson, Chief Justice, Carter, Justice, Traynor, Justice, Schauer, Justice.

[fol. 89] IN SUPREME COURT OF CALIFORNIA

[L. A. No. 18946. In Bank. June 26, 1946.]

THE RESCUE ARMY (a Corporation) et al., Petitioners, v. THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES, Respondent.

OPINION—June 26, 1946

[On hearing after decision by the District Court of Appeal, Second Appellate District, Division Three, denying writ of prohibition without opinion, Nov. 29, 1943. Writ denied.]

[1a-1c] Prohibition—Grounds—Excess of Jurisdiction.—The constitutionality of a statute or ordinance may be tested by prohibition on the ground that its invalidity goes to the jurisdiction of the court to try the case. While prohibition is limited to proceedings without or in excess of jurisdiction, and while a trial court has jurisdiction to determine the constitutional question, yet when it has decided in favor of its jurisdiction and proceeds to try the case it may then be claimed that a court without jurisdiction is proceeding to exercise it, and resort to prohibition is proper to restrain the court from acting in excess of jurisdiction.

[2a, 2b] Id.—Grounds—Excess of Jurisdiction.—The fact that the trial court has no jurisdiction within the meaning of that term as used in certiorari and prohibition does not mean that a judgment based on an unconstitutional statute is open to collateral attack, and to allow a writ of prohibition to test the constitutionality of a statute does not open the door for such purpose.

[3] Id.—Grounds—Want or Excess of Jurisdiction.—In certiorari and prohibition proceedings, the term "jurisdiction" has a very broad meaning, and a writ may

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[1] Determination of constitutionality of statute in prohibition proceeding, note, 113 A.L.R. 796. See, also, 21 Cal.Jur. 618; 42 Am.Jur. 168.

McK. Dig. References: [1, 2] Prohibition, § 2; [3] Prohibition, § 16(1); [4] Prohibition, § 51; [5] Courts, § 21; [6] Prohibition, § 55; [7] Prohibition, § 11; [8] Prohibition, § 14(2); [9, 10] Prohibition, § 14(5); [11] Constitutional Law, § 115; [12] Charities, § 38.

[fol. 90] be granted where the court has no jurisdiction to act except in a particular way, even though it has jurisdiction, in a fundamental sense, over the subject matter and the parties.

[4] Id.—Procedure—Objection and Ruling in Lower Court.—To authorize the issuance of a writ of prohibition to restrain a municipal court from proceeding to try a criminal case on the ground that the statute under which it claims jurisdiction is unconstitutional, it is necessary to challenge jurisdiction in that court, so that it may preliminarily decide the question whether it has jurisdiction to proceed.

[5] Courts—Jurisdiction—Determination.—A trial court is not deprived of jurisdiction to determine the constitutionality of a particular ordinance or statute by virtue of the fact that it may decide the question erroneously.

[6] Prohibition—Procedure—Petition.—A petition for a writ of prohibition on the ground of unconstitutionality of a statute or ordinance should affirmatively allege that the challenge to jurisdiction was raised in the inferior court. But this requirement may be dispensed with when not in the interests of justice, as where the requirement has not previously been emphasized and where the petitioner has been twice tried for violation of an ordinance which he claimed to be unconstitutional from the outset, and the court is about to proceed to a third trial.

[7] Id.—Other Remedies—Habeas Corpus.—Even though the remedy of habeas corpus may be used to test the constitutionality of a statute or ordinance, one awaiting trial under an allegedly unconstitutional ordinance should not be refused prohibition on the ground that habeas corpus would be available if he would submit to imprisonment.

[8] Id.—Other Remedies—Appeal—Test of Adequacy.—The remedy by appeal is not inadequate merely because more time would be consumed by pursuing it through the ordinary course of law than would be required in the use of the writ of prohibition.

[9] Id.—Other Remedies—Appeal.—Whether there is an adequate remedy by trial and appeal in the ordinary course of law that will preclude prohibition must be

determined in each case not only on the basis of precedent but also from an examination of the facts. The reviewing court has discretion to determine the circumstances which justify the use of prohibition, and in the exercise of that discretion may take into consideration the desirability of a prompt settlement so that a multiplicity of void proceedings in other cases will be prevented.

[10] Id.—Other Remedies—Appeal—Discretion of Court. —Where the petitioner for a writ of prohibition had been subjected to two trials and had successfully [fol. 91] prosecuted appeals from judgments of conviction and had sought to enjoin the enforcement of the ordinance on the ground that it is unconstitutional, the Supreme Court, in the circumstances, should not refuse to decide the jurisdictional questions involved in the criminal charges on the ground that there is a plain, speedy and adequate remedy by trial and appeal.

[11] Constitutional Law—Fundamental Rights—Freedom of Religion.—A person is free to hold whatever belief his conscience dictates, but when he translates his belief into action he may be required to conform to reasonable regulations which are applicable to all persons and are designed to accomplish a permissible objective.

[12] Charities—Municipal Control—Solicitation.—Provisions of Los Angeles Ordinance § 44.09, requiring persons who desire to solicit charitable contributions by means of boxes or receptacles in public places, to secure a permit therefor from the Board of Social Service, are constitutional.

Proceeding in prohibition to restrain the Municipal Court of the City of Los Angeles from proceeding with a trial for violation of an ordinance regulating the solicitation of contributions. Writ denied.

Robert H. Wallis for Petitioners.

Ray L. Chesebro, City Attorney, Donald M. Redwine, Assistant City Attorney, and John L. Bland, Deputy City Attorney, for Respondent.

Victor Ford Collins, Francis D. R. Moote and David Coleman as Amici Curiae on behalf of Respondent.

GIBSON, C. J.—Petitioners seek a writ of prohibition to restrain the Municipal Court of the City of Los Angeles from proceeding to try petitioner Murdock for the alleged violation of certain sections of an ordinance, regulating the solicitation of contributions, which it is claimed are in conflict with the federal Constitution, Amendments I and XIV, and the California Constitution, article I, section 21. It is alleged that Murdock has been twice convicted of a violation of the ordinance, that each time the conviction was reversed by the appellate department of the superior court, that a third trial has been ordered, and that the respondent court will proceed therewith unless restrained.

[1a] The constitutionality of a statute or ordinance may be tested by prohibition on the ground that invalidity of the legislation goes to the jurisdiction of the court to pro- [fol. 92] ceed to try the case. (See *Whitney* v. *Superior Court*, 182 Cal. 114 [187 P. 12]; *Levy* v. *Superior Court*, 105 Cal. 600 [38 P. 965, 29 L.R.A. 811]; *Arfsten* v. *Superior Court*, 20 Cal. App. 269, 275 [128 P. 949]; *cf. Broady* v. *Jennings*, 70 Cal. App. 647 [234 P. 120].) This rule is supported by the great weight of authority in other states. (See cases collected in 113 A.L.R. 796, 800; 42 Am. Jur. 168.) The same principle has been applied in cases where habeas corpus has been used to test the constitutionality of an ordinance. (See *In re McCoy*, 10 Cal. App. 116, 124-125 [101 P. 419]; *In re Vitalie*, 117 Cal. App. 553, 557 [4 P. 2d 171]; *cf. Ex parte Kearny*, 55 Cal. 212; Ferris, Extraordinary Remedies (1926) 83; 1 Bailey on Habeas Corpus (1913) 91-93; 25 Am. Jur. 164.) Although the right to discharge by habeas corpus is not limited to cases in which a court has exceeded its jurisdiction (see Pen. Code, §§ 1485, 1487; *In re Bell*, 19 Cal. 2d 488, 492-495 [122 P. 2d 22]; *Portnoy* v. *Superior Court*, 20 Cal. 2d 375, 378 [125 P. 2d 487]), the writ has been traditionally used for that purpose. (See *In re Vitalie*, 117 Cal. App. 553, 557 [4 P. 2d 171].)

The view that constitutionality goes to jurisdiction has at times disturbed the courts because of the possibility that full application of the theory might render otherwise final judgments vulnerable to collateral attack, and confusion also has sometimes arisen because of a failure to understand that a court has jurisdiction to determine its own jurisdiction in the first instance. The difficulties in-

herent in applying the term jurisdiction in cases involving unconstitutional statutes impelled the court in the Bell case to recognize that habeas corpus may be used in certain situations to test the constitutionality of a statute whether or not there is a want of jurisdiction. (19 Cal. 2d at pp. 492, et seq.) In prohibition, however, we are limited by statute to proceedings without or in excess of jurisdiction (Code Civ. Proc., § 1102) and we are therefore squarely confronted with the problems referred to above.

[2a] The fact that a trial court has no jurisdiction within the meaning of the term as used in certiorari and prohibition proceedings does not mean that a judgment based upon an unconstitutional statute is open to collateral attack. In *Chicot County D. Dist.* v. *Baxter State Bank*, 308 U. S. 371 [60 S. Ct. 317, 84 L. Ed. 329], a civil case, the court declared that broad statements to the effect that unconstitutional laws confer no rights whatsoever must be taken with qualifications and that a decree based upon an assumption of validity is res judicata. (See, also, 136 A.L.R. 1032; (1942) 28 Va. L. Rev. 656-657; (1942) 27 [fol. 93] Iowa L. Rev. 315-322 and (1942) 26 Minn. L. Rev. 658-661.) [3] In certiorari and prohibition proceedings the term jurisdiction has a very broad meaning, and a writ may be granted where the court has no jurisdiction to act except in a particular manner, even though it has jurisdiction, in the fundamental sense, over the subject matter and the parties. (*Abelleira* v. *District Court of Appeal*, 17 Cal. 2d 280, 287 et seq. [109 P. 2d 942, 132 A.L.R. 715]; *Hill* v. *Superior Court*, 16 Cal. 2d 527 [106 P. 2d 876]; *Fortenbury* v. *Superior Court*, 16 Cal. 2d 405 [106 P. 2d 411].) [2b] It does not follow, therefore, that to allow prohibition in such cases will result in opening the door to collateral attack.

[1b] The Bell case correctly declares that the trial court has jurisdiction to determine whether the statute is constitutional, and the same is true as to any other jurisdictional defense. The mere assertion of a claim of unconstitutionality does not oust the trial court of jurisdiction, because the very issue of constitutionality is one which the court has jurisdiction to determine. (See discussion, *In re Bell, supra*, 19 Cal. 2d 488, 492.) This proposition, however, is not inconsistent with the holding that prohibition lies to restrain a court from proceeding without or in ex-

cess of jurisdiction. (See *Abelleira* v. *District Court of Appeal*, 17 Cal. 2d 280 [109 P. 2d 942, 132 A.L.R. 715]; *Hill* v. *Superior Court*, 16 Cal. 2d 527 [106 P. 2d 876].) A court has jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and it must have authority to decide that question in the first instance. [4] It is necessary, therefore, to challenge the jurisdiction of the trial court *in that court*, by demurrer, motion, plea or other objection of some kind, so that *that court* may preliminarily decide the question whether it has jurisdiction to proceed. And unless a party can show that a lower tribunal, *after first determining that it has jurisdiction, is proceeding to exercise it*, there is nothing for a higher court to prohibit. This obvious principle is one of the cornerstones of our system of lower and higher tribunals.

[5] The statement in *Portnoy* v. *Superior Court*, 20 Cal. 2d 375, 378 [125 P. 2d 487], that a trial court is not deprived of jurisdiction to determine the constitutionality of a particular ordinance or statute by virtue of the fact that it may decide the question erroneously, is properly applicable to this basic right of the trial court to decide the question of jurisdiction in the first instance.

[1c] When, however, the trial court has heard and determined the jurisdictional challenge, and has decided in [fol. 94] favor of its own jurisdiction, and then proceeds to *act*, that is, *to try* the cause on its merits, the situation is entirely different. It then may be properly claimed that a court without jurisdiction is purporting to *exercise it*. At this stage, jurisdiction to determine jurisdiction has been exercised, and the higher courts will, in an appropriate case, restrain the lower court from acting in excess of jurisdiction (see, e. g., *Greenberg* v. *Superior Court*, 19 Cal. 2d 319 [121 P. 2d 713]; *Abelleira* v. *District Court of Appeal*, 17 Cal. 2d 280 [109 P. 2d 942, 132 A.L.R. 715]; *Jackson* v. *Superior Court*, 10 Cal. 2d 350 [74 P. 2d 243, 113 A.L.R. 1422].) [6] The petition should affirmatively allege that the challenge to jurisdiction was raised in the lower court.

Although the petition in the present case does not affirmatively allege that the jurisdiction of the municipal court was challenged by an appropriate motion, the parties do not assert such a challenge was not made, and since

Murdock has been twice tried for the violation of an ordinance which from the outset he has claimed to be unconstitutional, and the case has been set for trial a third time, it is apparent that the court has decided in favor of its own jurisdiction and is proceeding to exercise it. Moreover, although the requirement that before applying for prohibition the claim of unconstitutionality must be made in the trial court has been generally observed in practice (see *Jackson* v. *Superior Court, supra,* and *Greenberg* v. *Superior Court, supra*) the requirement that the petition must affirmatively allege compliance with the condition has not been emphasized in previous decisions of this court. Under these circumstances we have determined that it is not in the interests of justice to refuse to entertain the application because of the absence of a more complete showing in the petition.

[7] It is not, of course, a proper case for prohibition if there is a plain, speedy and adequate remedy in the ordinary course of law. As we have seen, the constitutional challenge may ordinarily be made by demurrer or motion in the trial court. In addition, habeas corpus may be used to test the constitutionality of a statute (*In re Bell,* 19 Cal. 2d 488 [122 P.2d 22]), and the availability of that remedy has been held to be a complete bar to the issuance of prohibition. (*Leach* v. *Superior Court* (1932), 215 Cal. 531 [12 P.2d 1].) But where, as here, the defendant cannot use habeas corpus because he is not being deprived of his liberty, he should not be refused prohibition, while [fol. 95] awaiting trial, solely on the ground that habeas corpus would be available if he would submit to imprisonment.

[8] The next question, therefore, is whether trial and appeal are adequate remedies under the circumstances of this case. A remedy is not inadequate merely because more time would be consumed by pursuing it through the ordinary course of law than would be required in the use of the extraordinary writ of prohibition. (*Bennett* v. *Superior Court,* 218 Cal. 153, 156 [21 P.2d 946]; *Lindley* v. *Superior Court;* 141 Cal. 220 [74 P. 765]; *Agassiz* v. *Superior Court,* 90 Cal. 101 [27 P. 49].) Experience has shown that most of the meritorious defenses are sustained and most of the unsubstantial constitutional or other objections are weeded out at the proper time on the proper

showing during the trial or on appeal. These remedies are therefore considered adequate in the usual situations. If this were not so, then whenever jurisdiction is challenged prohibition would lie and the trial of the case would be interrupted until the reviewing court passed upon the intermediate question and appellate courts in many cases would be converted into *nisi prius* courts. (*Agassiz* v. *Superior Court,* 90 Cal. 101, 103 [27 P. 49].)

It does not follow, however, that the remedies of trial and appeal must be considered adequate in all situations. It has been held in two recent cases that these remedies did not afford sufficient relief under the circumstances there presented. (*Greenberg* v. *Superior Court,* 19 Cal.2d 319 [121 P.2d 713]; *Jackson* v. *Superior Court;* 10 Cal.2d 350 [74 P.2d 243, 113 A.L.R. 1422].) In the Jackson case an attempt was made to retry the defendants on the identical charge for which they previously had been in jeopardy. In the Greenberg case there was an indictment of an individual against whom no evidence at all was presented to the grand jury. The issue of jurisdiction was first raised in both cases by motion or demurrer in the trial court and petitioners sought prohibition only after an adverse ruling below. The disregard of the fundamental rights of the defendants in these cases was so obvious and flagrant that this court felt that the expense, effort and delay of trial in the superior court would be an unfair burden on the petitioners.

[9] The fact that the remedies of trial and appeal were considered adequate in some cases and not in others does not mean that the application for the writ was arbitrarily granted in one and refused in another or that the decisions cannot be reconciled on principle. It is difficult, if not impossible, to lay down a hard and fast rule which will [fol. 96] govern all situations, and it must be determined in each case, not only on the basis of precedent but from an examination of all the facts, whether there is an adequate remedy in the ordinary course of law. A reviewing court, in order to prevent a failure of justice, has discretion in accordance with established legal principles and practice, to determine the circumstances which justify the use of prohibition to restrain a lower tribunal from acting without or in excess of its jurisdiction. And in the exercise of that discretion it may take into consideration the

desirability of the prompt settlement of an important jurisdictional question so that a multiplicity of void proceedings in other cases will be prevented.

[10] As heretofore pointed out, petitioner Murdock has been subjected to two trials and has successfully prosecuted two appeals from judgments of conviction. We granted a hearing in this matter after petitioners' application for a writ to restrain a third trial was denied by the district court of appeal, and, in order to secure uniformity of decision of related problems, transferred to this court the appeal in *Gospel Army* v. *City of Los Angeles*, [1] 27 Cal.2d 232 [163 P.2d 704], in which plaintiff sought to enjoin the enforcement of the same ordinance. We should not under these circumstances, in fairness to petitioner or respondent court, refuse to decide in this proceeding the jurisdictional question involved in the criminal charges, on the ground that there is a plain, speedy and adequate remedy by trial and appeal.

We come, therefore, to the question whether the sections of the Los Angeles Charities and Relief Ordinance under which Murdock is charged are unconstitutional. In the Gospel Army case, *supra*, [2] page 232, we examined this legislation and some of the basic problems here involved are answered by our decision in that case, but we did not have occasion to deal specifically with one of the sections of the ordinance under which Murdock is charged. A certain amount of repetition of our discussion in the Gospel Army case is unavoidable if we are to present in an orderly and understandable manner the issues raised by petitioners' contentions in this proceeding.

Insofar as pertinent here, the ordinance provides that no person shall solicit any contribution for any charitable purpose unless there shall be filed with the Department of Social Service written notice of intention to solicit, to- [fol. 97] gether with information concerning the character of the solicitation, how it is to be made, and the purpose for which the funds are to be used. (§ 44.05.) [3] The de-

[1, 2] Advance Report Citation: 27 A.C. 246.

[3] Sec. 44.05. CHARITY SOLICITATION—NOTICE OF INTENTION:

No person shall solicit, nor shall any officer or member of any association authorize any person to solicit, any

partment is authorized to investigate the statements made by the applicant and to issue information cards setting forth such facts as may be necessary to acquaint the public with the nature and worthiness of the purpose for

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contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

(a) The purpose of the solicitation and use of the contribution to be solicited;

(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

(c) The character of such solicitation and how it will be made or conducted;

(d) The expenses of the solicitation, including salaries and other items, if any, regardless or from what funds such expenses are payable;

(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true and correct copy of the original of such resolution by the

which the solicitation is made. (§ 44.03.)[1] The solicitor is required to exhibit the information card and read it to [fol. 98] the person solicited, or present it for his perusal

officer of such association having charge of the records thereof;

(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation.

[1] Sec. 44.03." POWERS OF DEPARTMENT:

The Department shall have the following powers:

(a) To investigate the allegations of Notice of Intention, or any statement or reports;

(b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made;

(c) To investigate at any time the methods of making or conducting any such solicitation;

(d) To issue to all solicitors Information Cards which cards shall show:

(1) That same is issued as information for the public and is not an endorsement;

(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;

(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;

(4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made;

(e) To charge a fee for supplying Information Cards, at the rate of four cents per card; provided that when more than twenty-five cards are issued at one time for the same solicitation, the fee for all such cards in excess of twenty-five shall be one cent per card.

before accepting a contribution. (§ 44.12.)[1] It is incumbent upon persons soliciting contributions for charity by means of receptacles in certain specified publicly owned and controlled places to secure the express written permission of the Board of Social Service Commissioners (§ 44.09(a).)[2] and anyone making such solicitations by means of receptacles in certain other places open or accessible to the public is required to file a "notice of intention" as required by section 44.05. (§ 44.09(b).)[2]

The ordinance is designed to protect the public from fraud and deception in the solicitation of funds for charity and to provide the public with information from which it may determine the nature and worthiness of the charitable purpose for which the collection is made. The regulatory provisions apply to all charitable solicitations, and though collections made solely for missionary, evangelical and

[1] Sec. 4412. SOLICITATION—INFORMATION CARD:

No person shall solicit any contributions unless he exhibits an Information Card provided for in Sec. 44.03 of this Article and reads it to the person solicited or presents it to said person for his perusal, allowing him sufficient opportunity to read same, before accepting any contribution so solicited.

[2] Sec. 4409. [As amended by Ordinance No. 84,121, approved Feb. 5, 1941.] SOLICITATION—BOXES—RECEPTACLES.

(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon any public street, sidewalk or way, or in any public park or in any publicly owned or controlled place, except by the express written permission of the Board.

(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box or receptacle in any place immediately abutting upon any public sidewalk or way, or in any place of business open to the public, or in any room, hallway, corridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a "notice of intention" as required by Sec. 44.05, and every person so soliciting must, in all other respects comply with the provisions of this Article.

other religious purposes are exempted therefrom, it is clear that the intent is to regulate charitable solicitations [fol. 99] whether or not they are part of a religious program. In the Gospel Army case, *supra*, [1]page 232, we held that the prior restraint thus imposed does not contravene the liberties guaranteed by the First Amendment.

In *Reynolds* v. *United States*, 98 U.S. 145, 164 [25 L.Ed. 244], Chief Justice Waite, in commenting upon a statement of Thomas Jefferson concerning the meaning of the First Amendment, to the effect "that the legislative powers of the government reach actions only, and not opinions," said: "Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order." Mr. Justice Roberts in *Cantwell* v. *Connecticut*, 310 U. S. 296, 303-304 [60 S.Ct. 900, 84 L.Ed. 1213; 128 A.L.R. 1352], restated the rule in clear and simple language, as follows: "Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society."

[11] There can be no question, therefore, that a person is free to hold whatever belief his conscience dictates, but when he translates his belief into action he may be required to conform to reasonable regulations which are applicable to all persons and are designed to accomplish a permissible objective. (*Gospel Army* v. *City of Los Angeles*, *supra*, [1]p 232.)

Petitioners allege that Murdock was charged with having violated sections 44.09 and 44.12 of the Charities and Relief Ordinance.

Section 44.12, requiring a solicitor to exhibit an information card to the person solicited, was approved in the Gospel Army case, *supra*, [2]page 232. We held in that case that information cards issue automatically upon the filing of the required information and the payment of the four cents for each card, and that the department is without authority to withhold such cards when the require-

[1]Advance Report Citation: 27 A.C. 246.
[1, 2]Advance Report Citation: 27 A.C. 246.

ments are met. What we said there disposes of petitioners' contentions here with respect to the validity of the charge against Murdock based on this provision.

[12] We had no occasion in the Gospel Army case, however, to give specific consideration to section 44.09 which [fol. 100] underlies the other charge pending against Murdock. Subdivision (a) of this section makes it incumbent upon persons soliciting contributions for charitable purposes *by means of receptacles in certain specified publicly owned or controlled places* to secure the express written permission of the board. It is well known that religious and charitable organizations frequently use receptacles to collect money from individuals in public places. It is obvious that it would be exceedingly difficult to obtain contributions in congested areas if the solicitor had to present each person solicited with an information card. It is apparent also that it would be hard to enforce a requirement of that kind under such circumstances.

When section 44.09(a) is read in the light of these circumstances and difficulties which give rise to the necessity for the requirement of a permit when contributions are to be solicited by receptacles, sufficient standards for the issuance of such permit are inherent in and follow from the reasons requiring it. While persons solicited by means of an information card are thereby sufficiently advised to discern any unfair or fraudulent scheme, passers-by solicited by means of receptacles have no similar chance of protecting themselves. Hence, if fraud appears from the information secured from those seeking to solicit by means of receptacles, the board should decline to issue a permit. Otherwise, solicitation by this method would secure financial support that unquestionably would be denied if the solicitation were made by use of an information card which disclosed the fraud to the persons solicited. In addition to protection against fraud, the requirement of a permit to solicit charitable contributions in public places by means of receptacles, assures protection with respect to the maintenance of the public convenience and safety for it is conceivable that solicitation by this method under some conditions would interfere with the free flow of traffic. We conclude, therefore, that if subdivision (a) of section 44.09 is read, as it

must be, in light of the purpose and context of the entire ordinance, on the one hand, and the peculiar circumstances attendant upon collections by means of receptacles in public places, on the other hand, that the denial of a permit is warranted only if the information furnished to the board discloses fraud or if the solicitation as planned would interfere with the public convenience and safety. So construed, the standards applicable to the granting of the permit are reasonable and the condition imposed by subdivision (a) does not prevent or unduly restrict the collection of funds. The requirement of the subdivision is not only reasonable but assures regulation without dis- [fol. 101] crimination as to persons or causes. It may be added that the numerous other recognized methods of collecting funds are available to petitioner.

It is suggested that subdivision (a) imposes the same restraint as did the statute condemned in *Cantwell* v. *Connecticut*, 310 U. S. 296 [60 S.Ct. 900, 84 L.Ed. 1213, 128 A.L.R. 1352]. That statute prohibited solicitation of money for religious, charitable or philanthropic causes without the approval of an administrative official. The ordinance challenged in this proceeding, however, is materially different from the statute involved in the Cantwell case. The statute there condemned empowered an administrative official to appraise the facts and to withhold permission to solicit if he determined the cause was not a religious one. The court held that to so limit the right of solicitation placed a forbidden burden upon the exercise of religious liberty.

It is clear, however, from what has been said before that the right to the permit required in subdivision (a) of section 44.09 does not depend upon a religious test. The board is not authorized or empowered to appraise the nature or worthiness of a religious cause or to deny a permit upon the ground that the cause is not a religious one. As before stated, the authority of the board is limited to regulating the issuance of permits for the solicitation of funds in the designated publicly owned or controlled places *by means of receptacles* for the sole purpose of preventing fraudulent practices and protecting the safety and convenience of the public. It is held in the Cantwell case that "a State may by general and non-discriminatory legislation regulate the times, the places, and the manner

of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment. . . . The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise." (310 U. S. 304, 305.)

Subdivision (b) of the section relates to the solicitation of charitable contributions by means of receptacles in certain specified places not included in subdivision (a). In such cases the solicitor is required to give the "notice [fol. 102] of intention" provided for in section 44.05. That section was approved in the Gospel Army case and for the reasons there stated the requirements of section 44.12 are valid.

Petitioners further contend that the ordinance is being unconstitutionally applied as to them. The allegations relied upon in support of this contention, however, are denied by the answer and the issues of fact thus presented will not be determined by us in this proceeding.

We conclude, therefore, that the provisions of the ordinance underlying the charges against Murdock are constitutional, and that in the absence of admitted or proven facts showing that the ordinance is being unconstitutionally applied, the alternative writ must be discharged and the peremptory writ must be denied. It is so ordered.

Shenk, J., Traynor, J., and Spence, J., concurred.

DISSENTING OPINION

CARTER, J., Dissenting.—I agree that the instant case is a proper one for review by a writ of prohibition but I cannot agree with the reasoning followed by the opinion of Chief Justice Gibson in arriving at that result.

It is fundamental that a court, whether it is a trial or appellate court, has the jurisdiction to determine its own jurisdiction. (*In re Grove Street*, 61 Cal. 438; *Clary* v. *Hoagland*, 6 Cal. 685; *Cohen* v. *Barrett*, 5 Cal. 195; *In re*

Meisner, 30 Cal.App.2d 290 [86 P.2d 124]; *In re Wyatt*, 114 Cal.App. 557 [300 P. 132]; *Fitzpatrick* v. *Sonoma County*, 97 Cal.App. 588 [276 P. 113]; *In re Tassey*, 81 Cal.App. 287 [253 P. 948]; *Dillon* v. *Dillon*, 45 Cal.App. 191 [187 P. 27]; 21 C.J.S., Courts, § 113.) The general rule is stated in 21 Corpus Juris Secundum, Courts, section 113. "Every court has judicial power to hear and determine, or inquire into, the question of its own jurisdiction, both as to parties and as to subject matter, and to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction." And as a necessary corollary to that proposition it has jurisdiction to decide the jurisdictional question wrongly as well as rightly. (*Portnoy* v. *Superior Court*, 20 Cal.2d 375 [125 P.2d 487]; *In re Bell*, 19 Cal.2d 488 [122 P.2d 22]; *Truck Owners etc., Inc.* v. *Superior Court*, 194 Cal. 146 [228 P. 19]; *Morehouse* v. *Superior Court*, 124 Cal.App. 38 [12 P.2d 133].) These things are conceded by the opinion of the chief justice but it goes on to say that once it has decided the question erroneously and is proceeding to exercise that jurisdiction it may be restrained by a higher court from exercising it; that [fol. 103] at that stage jurisdiction to determine jurisdiction has been exercised, implying that *thereafter* the court does not have jurisdiction because it has decided erroneously, and hence one of the extraordinary writs for testing jurisdiction will lie. The fallacy in that reasoning lies in the assumption that at some stage in the proceeding the court suddenly steps from a possession of power to a lack of it when all of the time the basic question was present of whether or not it had jurisdiction. A court may determine its jurisdiction at any stage of the proceeding. It is always an issue before it. (*Williams* v. *Sherman*, 36 Idaho 494 [212 P. 971].) It is probably due to the thought that if a court has jurisdiction to decide its own jurisdiction correctly or incorrectly, its determination cannot be questioned by a jurisdictional writ, that leads to the idle distinction between power to determine power and the exercise of the power once a favorable determination is made. The issue need not be complicated in that fashion. It is simple. Of course a court has jurisdiction to decide its jurisdiction, and it may be right or wrong. In *either* event the jurisdictional writs lie to review its

decision to ascertain whether the conclusion was correct. We are assuming that the court in making its decision is passing upon a question of *jurisdiction*. The question still remains one of *jurisdiction* after the decision as well as before and hence the jurisdictional writs are available to review it. The higher court entertaining the writ may conclude that the lower court was correct in its result and deny relief or the opposite conclusion may be reached and relief granted.

Perhaps the reasoning in the majority opinion was adopted to escape the untenable position taken by the majority of this court in *Portnoy v. Superior Court, supra.* It was there stated, after declaring that a court had jurisdiction to determine jurisdiction (the constitutionality of a statute) erroneously: "In the present case both the justice's court and the superior court on appeal have held that the ordinance is constitutional, and it cannot be said that in so holding they had exceeded their jurisdiction." This statement is clearly contrary to the holding in the majority opinion in the case at bar. If, as conceded in the opinion of the chief justice, the issue of constitutionality goes to the *jurisdiction* of the court, then that issue is still present and the decision of the court on that issue was subject to review by certiorari. The issue thus boils down to the simple proposition that whenever a lower court decides a jurisdictional question its decision is subject to review by certiorari, prohibition, habeas corpus or [fol. 104] other appropriate writ. That must be so because the question involved goes to the jurisdiction of the court. This does not mean that the lower court will not be given the opportunity to first decide the jurisdictional question. That is a matter of procedure—a matter of whether and when the higher court deems it wise to intercede—all of which is involved in the problem of whether other remedies are adequate. It does not involve the controversy of whether a jurisdictional question is present.

This brings us to the question of whether such a question is involved in the instant case, remembering that we are not concerned with the accuracy of the lower court's decision or its power to pass upon it. The constitutionality of a statute under which a court is acting goes to the jurisdiction of the court (*Whitney v. Superior Court*, 182 Cal. 114 [187 P. 12]; *Levy* v. *Superior Court*, 105 Cal. 600 [38 P.

965, 29 L.R.A. 811]), and if it is unconstitutional, any order or judgment made or rendered pursuant thereto is void and subject to collateral attack. The situation is not different than if the crime charged had been committed outside the territorial limits of the area over which the court had jurisdiction or was a crime which was within the exclusive jurisdiction of another court. In either case the lower court would have no jurisdiction to proceed with a prosecution and a higher court could issue a prerogative writ to stay such prosecution at any point. (*Antilla* v. *Justice's Court,* 209 Cal. 621 [290 P. 43].)

The ordinance involved is clearly unconstitutional. I have set forth in my dissenting opinion in *Gospel Army* v. *City of Los Angeles,*[1] 27 Cal.2d 232, 250 [163 P.2d 704], the reasons for that conclusion and I here repeat those views.

There are additional factors applying to the particular provision of the ordinance involved in the instant case, which render such provision invalid. The provision reads § 44.09(a): "No person shall solicit *any* contribution for *any purpose* by means of any box or receptacle, upon any public street, sidewalk or way, or in any public park or in any publicly owned or controlled place, except by express written permission of the Board." (Emphasis added.) The language is broad and comprehensive. Giving effect to all of its language as must be done in interpreting an ordinance, it clearly reaches solicitation on public property whether the receptacle is carried by the solicitor, and there is no obstruction of traffic, or is placed in or on the public place and is under the supervision of an attendant, [fol. 105] or is left unattended. All three of those aspects of the solicitation are necessarily included in the wording and cannot be separated. If the provision is invalid as to one of them it is invalid as to all. Leaving aside for the instant the authority of the officials to give permission to solicit thereunder, that is, treating the clause as an absolute prohibition against soliciting on public property by use of a receptacle, it is clearly a violation of Murdock's right to freedom of religion. The solicitation of funds for the cause is a legitimate incident of the exercise of religious freedom. The exercise of that freedom even

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[1] 27 A.C. 246, 264.

though receptacles are used cannot be wholly limited to places other than public property. In commenting on a statute stating that no child under certain ages shall sell any magazine or merchandise on any street or in any public place, the Supreme Court of the United States stated in *Prince* v. *Massachusetts*, 321 U.S. 158, 167 [64 S.Ct. 438, at page 443; 88 L.Ed. 645, 653]: "Concededly a statute or ordinance identical in terms with Section 69, except that it is applicable to adults or all persons generally, would be invalid. *Kim-Young* v. *California*, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155; *Nichols* v. *Massachusetts*, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155; *Jamison* v. *Texas*, 318 U.S. 413, 63 S.Ct. 669, 87 L.Ed. 869; *Murdock* v. *Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292, 146 A.L.R. 81; *Martin* v. *City of Struthers*, 319 U.S. 141, 63 S.Ct. 862, 87 L.Ed. 1313." And later: "Street preaching, whether oral or by handing out literature, is not the primary use of the highway, even for adults. While for them it cannot be wholly prohibited, it can be regulated within reasonable limits in accommodation to the primary and other incidental uses."

The fact that solicitation may be made under section 44.09(a) by express permission of the public officials does not save it: Where a statute is void on its face, such as is true of subdivision (a), the mere fact that an official may give consent to the conduct does not cure it when, as far as appears, the discretion of the official is uncontrolled—is guided by no valid signposts and he may act arbitrarily. Nor need a permit be sought under such circumstances as a prerequisite to raising the constitutional question. (See *Cantwell* v. *Connecticut*, 310 U.S. 296 [60 S.Ct. 900, 84 L.Ed. 1213, 128 A.L.R. 1352]; *Schneider* v. *State*, 308 U.S. 147 [60 S.Ct. 146, 84 L.Ed. 155]; *Hague* v. *C. I. O.*, 307 U.S. 496 [59 S.Ct. 954, 83 L.Ed. 1423]; *Lovell* v. *Griffin*, 303 U.S. 444 [58 S.Ct. 666, 82 L.Ed. 949]; *Smith* v. *Cahoon*, 283 U.S. 553 [51 S.Ct. 582, 75 L.Ed. 1264]; *cf. Cox* v. *New Hampshire*, 312 U.S. 569, 577-578 [61 S.Ct. 762, 85 L.Ed. 1049, 133 A.L.R. 1396].)

[fol. 106] There are no standards whatsoever which the enforcing officials must follow in determining whether the permit shall be issued. The legislative body has made no determination that traffic dangers are to be avoided or fraud prevented. The refusal of the permit is not con-

ditioned on any traffic hazard or obstruction or that the solicitor is engaged in a fraudulent scheme. In *Hague* v. *C. I. O.*, 307 U.S. 496 [59 S.Ct. 954, 83 L.Ed. 1423], the issue was the validity of an ordinance which denied use of the streets without a permit giving no standards to the officials. The court said, at page 516: "*It does not make comfort or convenience in the use of streets or parks the standard of official action.* It enables the Director of Safety to refuse a permit *on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage.'* It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs, *for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right.*" (Emphasis added.) In the instant case, we have freedom to exercise one's religion—a right in the same class as freedom of speech. Here the ordinance does not make convenience or use of public streets a test for the standard of official action. The permit may be denied on the "mere opinion" of the official that fraud or traffic hazards may occur.

The note in 128 A.L.R. 1361 is illuminating: "While there is a conflict among the state court decisions as to the validity under the Fourteenth Amendment to the Federal Constitution of statutes or ordinances regulating the solicitation of contribution for charitable, religious, or individual purposes by prohibiting such solicitation without a license and providing that the licensing officer or body shall issue such a license only where he deems the applicant a worthy person and his cause a worthy or bona fide cause, *it is now settled by decisions of the Supreme Court of the United States that such a statute or ordinance is void, since it authorizes a previous restraint upon the free exercise of the freedoms guaranteed by the Fourteenth Amendment by a licensing officer or body having no fixed standard for determining whether a license must be issued.*" (Emphasis added.)

It is aptly said in *Schneider* v. *State*, 308 U.S. 147, 163 [60 S.Ct. 146, 84 L.Ed. 155]: "It bans unlicensed communication of any views or the advocacy of any cause

from door to door, and permits canvassing only subject to [fol. 107] the power of a police officer to determine, as a censor, what literature may be distributed from house to house, and who may distribute it. *The applicant must submit to that officer's judgment evidence as to his good character and as to the absence of fraud in the 'project' he proposes to promote or the literature he intends to distribute,* and must undergo a burdensome and inquisitorial examination, including photographing and fingerprinting. In the end, his liberty to communicate with the residents of the town at their homes depends upon the exercise of the officer's discretion." (Emphasis added.) (See, also, *Hoyt Bros. Inc.* v. *Grand Rapids,* 260 Mich. 447 [245 N.W. 509].)

The only answer offered by the majority opinion to the lack of a standard for the issuance of permits is that as a test for the denial of permits there must be either fraud or an interference with the public safety or convenience. There is no mention whatsoever of those tests in section 44.09(a). The board is given unlimited power in passing upon an application for a permit. The majority opinion by judicial legislation places those standards in the ordinance. This attempt to unearth vague and uncertain standards *cannot stand in the face of this court's decision in In re Porterfield,* [1]*ante,* p. —— [168 P.2d 706]. This court there struck down an ordinance requiring a license (permit) to solicit, and quoted with approval from American Law Reports as follows (page[2] ——): "A statute or ordinance which vests arbitrary discretion with respect to an ordinarily lawful business . . . in public officials, without prescribing a uniform rule of action, or, in other words, which authorizes the issuing or withholding of licenses . . . according as the designated officials arbitrarily choose, without reference to all of the class to which the statute or ordinance under consideration was intended to apply, and without being controlled or guided by any *definite* rule or *specified* conditions to which all similarly situated might knowingly conform,—is unconstitutional and void." (Emphasis added.) The court then went on to say (the ordinance there was much more explicit in its

[1]Advance Report Citation: *Ante,* p. 102.
[2]Advance Report Citation: *Ante,* p. 121.

standards than in the instant case) that (p. 121) "It is to be noted that section 4 of the ordinance requires that application for a license be made in writing 'upon such forms as may be provided by said city council, a copy of which shall at all times be attached to said license.' The ordinance is utterly silent as to what the content of the forms [fol. 108] shall be." *No form whatsoever provided in the case at bar.* Continuing in the Porterfield case: "Section 6 provides that at the hearing to be held by the council on each application for a license, evidence shall be received of the *good moral character* of the applicant and *whether or not he is likely to resort to force, violence, threat, menace, coercion,* intimidation or corrupt means in his proposed work of solicitation. 'If the city council is satisfied that said applicant is of good moral character and will not resort to force, violence, threat, menace, coercion, intimidation or corrupt means in his proposed work of solicitation, it shall direct the issuance of a license to said applicant for said purpose of solicitation upon payment of the license fee herein provided for.'" *In the case at bar there is no mention of moral character or character of a kind likely to indulge in violence, as a standard for issuing a permit. No standard whatever is set forth.* Commenting on the terms of the ordinance there involved it is said in the Porterfield case (page [1]——): "We are of the opinion that on the face of the ordinance *the indefinite standards which it enunciates provide a mechanism for the deprival of constitutional rights,* not only on the basis of the guaranties applicable to free speech but also on the basis of those protecting the right to engage in lawful fashion in a lawful activity. It is pointed out by petitioner that the council members in the exercise of their power might very conceivably conclude that because of an applicant's labor union affiliations or because of his attitude upon controversial labor issues he did not have the prescribed qualities. It is entirely possible that on occasion a majority of the council might be members of a rival labor union or they might be employers engaged in a controversy with the union represented by the applicant. Certainly the standard provided by section 6 of the Redding ordinance is entirely subjective. Each council member is

[1] Advance Report Citation: *Ante,* p. 122.

left to determine in his own mind what is 'likely' to be the future conduct of the applicant. The character or extent of showing necessary to satisfy the council that the applicant is of good moral character and will not resort to the activities mentioned is not set forth. Satisfaction may be circumscribed by individual whim, caprice, or personal prejudice."

The ordinance in the case at bar cannot stand in the face of the tests applied in the Porterfield case. The ordinance involved in that case sought to place restrictions upon the constitutional right of freedom of speech. The [fol. 109] ordinance in the case at bar seeks to restrict the constitutional right of freedom of religion. The ordinance in each case reposes in a board uncontrolled discretion to exercise arbitrary power in acting upon applications for permits to exercise such constitutional rights. The ordinance in the Porterfield case was held unconstitutional on that ground. It follows that the ordinance in the case at bar should likewise be held unconstitutional insofar as it trenches upon the constitutional right of petitioner herein.

In my opinion the writ should issue as prayed.

SCHAUER, J.—I concur in the conclusion reached by Mr. Justice Carter and in the discussion supporting his conclusion insofar as it relates to the constitutionality of the ordinance involved herein.

EDMONDS, J.—For the reasons stated by me in the Gospel Army case, I am of the opinion that section 44.09 of the Los Angeles ordinance, as well as the provisions which were considered in the prior proceeding, are unconstitutional. Accordingly, I join in the conclusion that the writ of prohibition should issue.

[fol. 110] [File endorsement omitted.]

[fol. 111] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR REHEARING—Filed July 11, 1946

To the Honorable the Supreme Court of the State of California:

Petitioners above named respectfully request and urge a rehearing of this appeal.

Reasons for the petition are:

1. The majority opinion and the decision of this Court indulges in judicial legislation without which the conclusion reached would have no foundation.

2. Said opinion is in apparent irreconcilable conflict with other leading decisions of this Court from which situation great confusion as to the law therein written results.

3. The instant decision and opinion errs in failing to recognize that sections of the ordinance involved are so dependent upon and interwoven with other sections thereof and the whole scheme and plan of said law that they [fol. 112] cannot be segregated and judicially appraised alone.

4. Said opinion and decision fails to consider questions presented by the petitioners without which a full and complete decision cannot be rendered.

Petitioners Specify the Following Grounds for Rehearing:

(a) The opinion and decision herein adds to Section 44.12 of the ordinance involved, a provision of law which reads: "The denial of a permit is warranted only if the information furnished the Board discloses fraud or if the solicitation as planned would interfere with the public convenience and safety."

(b) By adoption from the opinion in Gospel Army v. City of Los Angeles (recently delivered) the instant opinion enacts that "the department is without authority to withhold such cards (inspection cards) when the requirements are met," to-wit, "the filing of the required information and payment of four cents for each."

II

(a) Said opinion is so at variance with the recent decision in In re Porterfield, 28 A.C. 102, that the conclusion [fol. 113] seems inescapable that both cannot be sound and it is highly important that in the interest of the dispensation of even handed justice and the unscrambling of the points of conflict elucidation thereof is essential. (See Justice Curtis' dissenting opinion:)

(b) A similar condition exists in an even more extreme degree as to the instant decision and In re Darte, 172 Cal. 47, which decision, if accepted as the law, would compel an order granting the writ herein. (Petitioners' briefs herein and points and authorities re the petition.)

III.

The instant opinion errs in that it gives scant attention to sections of the ordinance other than 44.09 and 44.12, and none to the general plan and design of the law, although said sections, standing alone, and as applied to all solicitations, including those for religion, would be clearly violative of the 14th Amendment to the Federal Constitution as creating prior restraints upon the exercise of the right of religious freedom and as delegating to an administrative board powers to act unreasonably, arbitrarily and with partiality.

(a) Section 44.09, as pointed out in the dissenting opinion by Mr. Justice Carter contains three inhibitions. [fol. 114] That contained in 44.09 (a) is clearly applicable to the instant case since the solicitations by Murdock for the Rescue Army concern religious activities, and the provisions for charities are expressly set forth in subdivision (b).

Section 44.09 (a) prohibits all solicitations through receptacles on public streets, etc., except with the "express written permission of the Board." Hence the Board is unrestricted as to the exercise of its discretion. The said 14th Amendment, itself, permits such solicitations for religion, but the section permits the Board to refuse them at its own unbridled discretion or groundless whimsy.

(b) Section 44.12 applies to all solicitation for charitable purposes. The ordinance purports to regulate them.

However, its classification and definition of charities includes religious purposes if any fraction of the money or goods is to be used for charity. (Section 44.16.)

Also, to "exhibit an information card" as Section 44.12 requires, involves the prior securing of such card (Section 44.03). This much the opinion herein notices, but it fails to consider numerous other sections necessarily involved in securing such card.

True, said opinion refers to the Gospel Army opinion [fol. 115] in this behalf, but that opinion failed entirely to analyze or elucidate such other sections although the dissenting opinions in that case perform that function and unanswerably show that separately, and as a whole, prior restraints upon the exercise of the right of freedom of religion and of charity of a prohibitive, arbitrary and highly prejudicial character are created.

IV

(a) The opinion herein is defective and errs in that it fails to consider the assignment in the petition that the provision of said ordinance which authorizes the Department of Social Service to "approve" such charitable associations" as it deems are entitled to approval and thereby exempt them and their solicitors from all of the procedural requirements of the ordinance, including those in Sections 44.12 and 44.09, empowers said Department to grant immunities and privileges to a class while denying the same to others in violation of said 14th Amendment and of Article I, Section 21 of our State Constitution.

This issue is directly involved in the instant appeal.

(b) Said opinion and decision, in holding Sections 44.09 and 44.12 constitutional, fails to consider that in order [fol. 116] to obtain the "Information Card" required therein the applicant must file a notice of intention, of a voluminous character, supply any and all "additional information" which the Department sees fit to demand[1]; wait while said Department conducts an investigation of unlimited scope, if it chooses to do so; have the written

[1]Section 44.06.

authorization of the person or organization he represents, and he or it must maintain an accounting system.[1]

These are among the burdens to be borne prior to securing an information card to be exhibited in soliciting pursuant to Section 44.12. Legally or illegally, they are all prior restraints upon solicitation, and to pass upon the legality of Section 44.12 without considering them is to exclude the gist of the last section. Other sections add even greater burdens, after solicitations are made. Sections 44.05 to 44.16, inclusive, are one unit and Section 44.12, alone, is insignificant as a revelation of its true import and the prior restraints which it entails.

[fol. 117] (c) The petition for issuance of a writ of prohibition and the petition for hearing in this Court squarely present the issue that petitioners' activities for which Murdock is prosecuted are religious, and that to require, as the ordinance does, that they be licensed through the issuance of an "Information Card" is a clear infringement of the right to exercise religious freedom and of the 14th Amendment to the Federal Constitution, and since no such license can be lawfully made a prerequisite to solicitation for religious purposes Sections 44.12 and 44.09 are necessarily unconstitutional exactions.

The instant opinion applies these provisions of an ordinance purporting to regulate charities to religious activities. Yet no mention of the religious feature is made or justification provided by reference to the arbitrary provision of the ordinance which classifies all solicitations not "purely" religious as charitable.

Petitioners have argued to this Court that the entire ordinance, including Sections 44.09 and 44.12 are violative of the right of religious freedom by reason of said unreasonable and unwarranted classification, and, it is submitted, the validity of the last-named sections cannot be determined without consideration of the validity of the [fol. 118] "purely for religious" provision.

Petitioners have claimed that Sections 44.09 and 44.12 are rendered invalid under the equal protection of the

[1]Section 44.05, of which Justice Carter in the Gospel Army case said: "The much maligned income tax forms . . . are no more complex and demanding."

laws clause of the 14th Amendment to the Federal Constitution by the provisions of Section 44.03, which empowers the City Board to exempt others similarly situated from compliance with said Sections 44.09 and 44.12. The opinion and decision herein fails to consider this issue.

For the foregoing reasons and upon the grounds above set forth petitioners adhere to their contentions heretofore made in respect to the ordinance as a whole and Sections 44.09 and 44.12 in particular are violative of the privileges and immunities clause, the equal protection of the laws clause, and the due process guaranty of the 14th Amendment to the Constitution of the United States, and a[illegible] that a rehearing of this appeal be ordered.

Respectfully submitted, Robert H. Wallis, Attorney for Petitioners

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[fol. 119] IN THE SUPREME COURT OF CALIFORNIA

IN BANK

L. A. No. 18946.

[Title omitted]

ORDER DENYING REHEARING—July 24, 1946

Petition for rehearing denied.

Edmonds, J., Carter, J. and Schauer, J. voting for rehearing.

Dated: July 24, 1946.

GIBSON, Chief Justice.

[File endorsement omitted.]

[fol. 120] [File endorsement omitted.]

[fols. 121-183] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR APPEAL—Filed August 29, 1946

Aggrieved by the decision of the Supreme Court of the State of California duly entered and made final on the 24th day of July, 1946, discharging the alternative writ and denying the petition for peremptory writ and, claim-

ing that rights guaranteed by the Fourteenth Amendment to the Constitution of the United States are thereby violated, appellants, The Rescue Army, a corporation, and Charles T. Murdock, hereby pray that an appeal be allowed to the Supreme Court of the United States.

Robert H. Wallis, Attorney for Appellants.

[fol. 183a] Cost Bond on Appeal for $500 filed Aug. 29, 1946 omitted in printing.

[fol. 184] In Supreme Court of California

Assignment of Errors—Filed August 29, 1946

The said appellants, The Rescue Army and Charles T. Murdock, assign the following errors in the record and proceedings in said case:

I

The Supreme Court of the State of California erred in its opinion, decision and judgment in the case of The Rescue Army v. Municipal Court of the City of Los Angeles in implicitly holding (and in failing to hold to the contrary although the issue was duly presented in the petition and petitioners' briefs) that the "Charities and Relief" ordinance of said city is a valid exercise of the police power and is not, as applied to religious organizations, and especially to said Rescue Army and Charles T. Murdock, violative of the right to exercise freedom of religion, guaranteed by the Fourteenth Amendment to the Federal Constitution, and that it does not arbitrarily and unreasonably, and by its mere fiat, segregate all religious-charitable activities of such organization from the missionary, evangelical and religious activities of such organization, and that it does not impose upon all religious-charitable activities of such organizations unreasonable, burdensome and time-consuming prior restraints, and that its provisions do not delegate to an administrative board and its agents power to deny such organizations the exercise of religious freedom without [fol. 185] legislative standards to control their decision.

The Supreme Court of the State of California, by its opinion, decision and judgment, erred in holding that

Section 44.09(b) of said Charities and Relief Ordinance of said City of Los Angeles (being Chapter 4, Article 4 of the Municipal Code thereof) is reasonable, valid and constitutional and that it does not violate any clause of the Fourteenth Amendment to the Constitution of the United States, and said opinion, decision and judgment erred in that said Court therein and thereby failed and refused to decide and hold that said section infringes the privileges and immunities, the equal protection of the laws and the due process clauses of said Constitution, in that said section requires that any person who solicits any contribution for any charitable purpose in the public places specified therein, to comply with *all of the other sections of said ordinance,* among which other sections are provisions clearly violative of every guaranty and clause in said Fourteenth Amendment, many of which violations and provisions will be identified and specified in succeeding assignments of error herein.

III

Said opinion and decision errs in construing said ordinance in that it enacts by judicial legislation a provision not written into any section thereof by the law, reading in substance as follows: The Department is without authority to withhold such information cards when the [fol. 186] required information has been filed and payment of four cents for each information card has been made; and said opinion and decision, based in part on such extraneous provision, thereby violates the due process clause of said Fourteenth Amendment and the right of freedom of religion and the exercise thereof by petitioners.

IV

Said opinion and decision errs in construing Section 44.09 of said ordinance in that it adds, by unwarranted judicial legislation, the following provision:

"The denial of a permit is warranted only if the information furnished the board disclosed fraud, or if the solicitation as planned would interfere with public convenience and safety,"

and said judicial legislation and the opinion and decision based thereon, to-wit, that said section, construed as con-

taining said added provision, is a reasonable and valid regulation, is non-discriminatory and does not invade the liberties protected by the Fourteenth Amendment to the Federal Constitution, constitutes an infringement of the right of freedom of religion and a violation of due process of law guaranteed by said Fourteenth Amendment; and it is further assigned as error and as violative of said constitutional provisions in that said Supreme Court failed and refused to hold that said section, without or with said added provision, is unreasonable, that it em- [fol. 187] powers said board to arbitrarily and capriciously and without guide or standard deny permission to solicit for charitable or religious organizations and to discriminate between applicants for permits and between the causes for which solicitations are planned, in violation of all clauses and provisions of said Fourteenth Amendment.

V

The said Supreme Court erred in its opinion, decision and judgment in said case in holding that said ordinance requires the Department of Social Service to issue the permit or Information Card, which all solicitors must have before soliciting donations for charities, upon the filing of the information required by said Department and the payment of 4¢ for each card, although by referring to the decision in The Gospel Army case, said opinion recognizes that no express provision of said ordinance so provides.

VI

The said Supreme Court erred in its opinion, decision and judgment in holding, by referring to said opinion in The Gospel Army case, that the provisions of said Section 44.02 of said ordinance, which authorize said board to "recall every such information card and amend or correct the same" and require the person who files it, or association on whose behalf the Notice of Intention was filed, to return said card and to present the recalled information card within 48 hours after receiving notice [fol. 188] to return it, are reasonable and valid and not burdensome, and said Supreme Court erred in failing and refusing to hold that said provisions are unreasonably time-consuming and burdensome and infringe the rights

of solicitors of donations and associations on whose behalf such solicitations are made to the exercise of the right of freedom of religion and constitute prior restraints upon the exercise of such rights, and of the right to engage in charitable activities, as guaranteed by the Fourteenth Amendment to the Federal Constitution, and in holding that Section 44.02 of said ordinance is reasonable and not burdensome, and is valid in empowering the board to publish the results of investigations by the department pertaining to applications for permits to solicit and the allegations of the Notice of Intention and to give publicify to any such results by such means as may be deemed best to reach the general public, and persons interested, and said opinion, decision and judgment erred in failing and refusing to hold that said provisions permit unreasonable delays and constitute prohibitive burdens upon the exercise of religious and charitable activities and the freedom of religion and the right to be charitable, in contravention of the due process clause of the Federal Constitution.

VII

The said Supreme Court erred in its opinion, decision and judgment in said case in holding valid and constitutional the provision in Section 44.03 of said ordinance [fol. 189] which provides that in issuing an information card, (permit to solicit) said department has power to show in said card that such issuance is "not an endorsement" or to state that "they endorse such charitable association," and said Supreme Court erred in failing and refusing to hold that said provision is a nullity on the ground that it delegates to the department power to endorse or refuse to endorse, arbitrarily and capriciously, since no reasonable standard is provided to guide and control its decision, thus violating the due process clause of the Federal Constitution; also, on the ground that said enactment creates two classes of permits and of charitable associations, the endorsed and the unendorsed, and arbitrarily and unreasonable denies to the latter the privileges and protection which it grants to the former, in violation of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution.

VIII

Said Supreme Court erred in its opinion, decision and judgment in said case in holding valid and constitutional the provisions of said ordinance in Section 44.03 thereof, which provides that upon the filing of a Notice of Intention (petition for permit) to solicit with said department, before acting on said petition, said department is authorized to investigate the allegations of said petition, or Notice of Intention, and to "have access to and inspect and make copies of all books, records and [fol. 190] papers of such person, by or on whose behalf any solicitation is to be made," and said Supreme Court so erred, as aforesaid, in failing and refusing to hold that each and all of said actions so authorized to be taken by said department are unreasonable and constitute arbitrary and onerous limitations upon the right to solicit for charity, and are prior restraints upon the exercise of the right of freedom of religion, and contravene the Fourteenth Amendment to the Federal Constitution upon both of these grounds.

IX

Said Supreme Court erred in its opinion, decision and judgment in said case in holding valid the provision in Section 44.03 of said ordinance which authorizes the said department, in issuing to an applicant for a permit to solicit, called therein an Information Card, to set forth therein information secured by independent investigation concerning the applicant, of which he has not been apprized or had opportunity to refute or explain which "in the opinion of the Board" shall be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made," and said Court erred in its opinion, decision and judgment in failing and refusing to hold that said provision is not void and does not violate the due process clause of the Federal Constitution for each of the following reasons:

1. That it empowers the defendants Board and Department to deprive the applicant of a property right [fol. 191] and property without due process of law;

2. That it provides no guide or standard by which said Board and said Department shall determine what infor-

mation will be of assistance to the public to determine the nature and worthiness of the charitable purpose for which the solicitation is to be made;

3. That it constitutes an unreasonable and burdensome previous restraint upon the exercise of the right to solicit for charitable purposes;

4. That as applied to solicitations which are an integral part and in furtherance of the purely religious activities of a religious organization, and as applied to the Rescue Army and its solicitors and to said Murdock, it constitutes a prohibitive prior restraint upon the exercise of the right of freedom of religion.

X

Said Supreme Court erred in its opinion, decision and judgment in said case in holding to be valid and not violative of the right of religious freedom or of the right to engage in charitable activities the provisions of Section 44.05 of said ordinance, which provide as follows:

"No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days [fol. 192] prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures [fol. 193] or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commission or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

Said Supreme Court erred in its opinion, decision and judgment in failing and refusing to hold that each of the provisions of this section constitute a prior restraint upon the exercise of the right of religious freedom, and of the right to engage in charitable activities, and to hold that said prior restraints are inhibited by the Fourteenth [fol. 194] Amendment to the Federal Constitution; said Court erred in failing and refusing to hold that, as applied to the Rescue Army and to its solicitors and their solicitations, each and all of said provisions are unreasonable and burdensome and time-consuming previous restraints upon the exercise by each of them of the rights above set forth and violations of the said Fourteenth Amendment.

Said Supreme Court also erred in holding that Section 44.05, as applied to solicitations for charity by religious organizations, and especially by said Rescue Army, where such solicitations are used in spreading religious doctrines and as an integral part of such religious activities, said section does not create prior restraints upon the exercise of the right of religious freedom in violation of said Fourteenth Amendment.

XI

Said Supreme Court erred in its opinion, decision and judgment in holding, by referring to the decision in The Gospel Army case, adequate and valid, the provision contained in Section 44.06 of said ordinance, which empowers said Department to decide that a Notice of Intention (petition for permit) "does not disclose sufficient information for the public concerning the facts required by Section 44.05 to be set forth or concerning the person or association making such solicitation or on whose behalf such solicitation is made," and said Supreme Court also [fol. 195] erred in failing and refusing to hold that said provision is void and violates the Fourteenth Amendment to the Federal Constitution, in that it empowers the Department to act and decide capriciously and arbitrarily and unreasonable, and provides no basis or standard to control the decision involved in said provision.

XII

Said Supreme Court erred in its opinion, decision and judgment in holding, by referring to said Gospel Army opinion and by upholding Section 44.12 as valid and violative of no constitutional right, that all of the provisions of Section 44.06 of said ordinance are valid and not burdensome, which provisions require that the applicant for permission to solicit "must file with the Notice of Intention a statement of any agreement made with any agent, solicitor, promoter . . . of such solicitation, together with a copy of each agreement, which may be in writing, and, if a change is made in such agreement, applicant must within twenty-four hours file a true copy of it with the Department, and must, if requested by the Department, provide any further information which the Board may require, and, if required by the Department, the Notice

of Intention and additional information must be signed by the person intending to make such solicitation and by two officers of the association."

Said Supreme Court erred, as above set forth, and in failing and refusing to hold that said provisions are viola- [fol. 196] tive of the Fourteenth Amendment to the Federal Constitution and of the right of those who seek to engage in charitable or religious activities, because said provisions each create and constitute a burdensome bar and previous restraint upon the exercise of such persons to freely engage in both or either of said activities.

XIII

Said Supreme Court erred in its opinion, decision and judgment in holding that the provisions of Section 44.12 of said ordinance are reasonable, valid and constitutional and not burdensome, as applied to solicitors for charity, whether the solicitation be for charity alone or for charity in furtherance of religion, which provisions require that all solicitors must read the Information Card to any person solicited for donations or present it to such person and "allow him sufficient opportunity to read the same before accepting any contributions so solicited," and said Supreme Court erred in said opinion and decision in failing and refusing to hold that said provisions are so burdensome as to be prohibitive of solicitations, and are arbitrary and unreasonable prior restraints upon the exercise of the right of freedom of religion, and especially of the exercise of said right by the Rescue Army and all of its solicitors, and of their rights to engage in charitable activities, and, hence, that said provisions contravene the Fourteenth Amendment to the Federal Constitution.

[fol. 197] XIV

The said Supreme Court erred in holding that the provisions of Section 44.14 of said ordinance are not burdensome and are reasonable, valid and constitutional, which provisions require that solicitors file with the Department a report to said Department, stating the contributions secured, "in detail, all expenses of or connected with such solicitation," "exactly," for what uses and the manner in which all contributions were disbursed, and that the statement be signed by the persons or associations obligated

to file the Notice of Intention, and said Supreme Court erred in not holding and in refusing to hold that each of said requirements is burdensome and unreasonable and a prior restraint upon the freedom of religion of the Rescue Army and its solicitors and creates and constitutes a prohibited prior restraint upon the exercise of the right of religious freedom and the right to be charitable of said parties, and of all others similarly situated.

XV

The said Supreme Court erred in its opinion, decision and judgment, in that in holding valid Section 44.09(b) said opinion holds that the provisions in respect to receipts to be given for donations and the contents thereof in Section 44.15 of said ordinance are not burdensome and violative of the right of freedom of religion, and are rea- [fol. 198] sonable, valid and constitutional; said pertinent provisions are:

> "No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:
>
> "(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.
>
> "(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.
>
> "(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for."

XVI

Said Supreme Court, by its opinion, decision and judgment erred in failing and refusing to hold that the foregoing provisions of Section 44.15 do not constitute pro-

hibitive prior restraints upon the exercise of the right of [fol. 199] religious freedom, and upon the exercise of that right and the right to dispense charities, of the Rescue Army and its solicitors and that therefore said provisions are violative of the Federal Constitution, amendment fourteen thereof.

XVII

Said Supreme Court, by its opinion, decision and judgment erred in holding to be reasonable, valid and constitutional the provision contained in Section 44.16 of said ordinance, which segregates solicitations for charitable purposes from solicitations for evangelical, missionary or religious purposes and severs from the latter class all solicitations whose purposes are not purely evangelistic, missionary or religious, even though they are in furtherance and an integral part of religion and other religious activities, and said Supreme Court, in its opinion, decision and judgment erred in failing and refusing to hold that said provision is arbitrary, unreasonable and discriminatory, in that it attempts by law to remove activities which in fact are religious from the realm of religion and from the protection of the Fourteenth Amendment to the Federal Constitution and its guaranty of freedom of religion.

XVIII

Said Supreme Court by its opinion, decision and judgment erred in upholding as valid, constitutional, and not burdensome or unreasonable, the provisions of Section 44.46 of said ordinance which authorizes the Board of [fol. 200] Social Service Commissioners of said defendant City to investigate the matter of solicitations for solely evangelical, missionary or religious purposes and if "in the opinion of the Board" such solicitation "is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case."

XIX

Said Supreme Court, by its opinion, decision and judgment, erred in failing and refusing to hold that the last foregoing provision is not a direct violation of the right of freedom of religion and of its exercise, and that it does not permit and create a prior restraint upon and interference with the exercise of said right in violation of the Fourteenth Amendment to the Federal Constitution.

XX

Said Supreme Court, by its opinion, decision and judgment, erred in holding that said Section 44.16 does not violate the rights of religious freedom and the right of property, guaranteed by said Fourteenth Amendment, of religious organizations, and especially such rights, of the [fol. 201] Rescue Army and of its solicitors and solicitor-promoters, in that it excludes from the exemption solicitations of money and goods if any part thereof is to be applied to charities incident to religious activities or to the compensation and support of the solicitor, in that said section of the ordinance provides that solicitations "*made solely for evangelical, missionary or religious purposes*" are exempt from all other provisions of the ordinance which are challenged herein as violative of petitioners' rights, and by this provision the Rescue Army and any of its solicitors or its solicitor-promoters, who seek donations for charity are thereby also arbitrarily denied the equal protection of the laws under said Fourteenth Amendment.

XXI

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that said last-named provision does not vest in the Board unbridled power to arbitrarily and partially nullify the efforts of solicitors and promoters for religious purposes and organizations and to thereby infringe the rights of religious freedom and the acquirement of property in violation of said Fourteenth Amendment, of promoters and other solicitors for such organizations and purposes, and especially, such rights of the Rescue Army and of its promoters and other solicitors.

XXII

Said Supreme Court, by its opinion, decision and judg-[fol. 202] ment in this case, erred in holding that provisions in Section 44.19(2)(a), (b) and (c), and subsection 3, are not burdensome and do not constitute prior restraints, and are reasonable, valid and constitutional. Said provisions are: "No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without a license from the Board so to do.

"(2) Application.

"To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application the applicant shall set forth, in addition to such information as may be required by the Board:

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

"(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation, that each of its managing officers and agents is of good character and reputation, or if the [fol. 203] applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation;

"(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter."

Subsection (3) requires the applicant to post a bond in the sum of $2,000.00, to insure payment of any "direct pecuniary loss sustained through any theft on the part of the principal."

XXIII

Said Supreme Court, by its opinion, decision and judgment in this case, erred in upholding Section 44.19, subsection (4), which requires the applicant for a promoter's license to pay a fee of $25.00 to said Board of Social Service Commissioners, and subsection (5) authorizes said Board to make such further investigation of the applicant and of "his affairs" as the "Board may deem advisable," and "if from such examination the Board shall be satisfied that the applicant is of good character and reputation," has "sufficient financial responsibility to carry out obligations incident to any solicitation such as applicant may make," that his statements in his application "are true," etc., the application shall be granted. "Otherwise, the Board shall refuse to issue the license."
[fol. 204] Said Supreme Court erred in holding and adjudging that the foregoing provisions are valid and constitutional and are not burdensome but are reasonable as applied to promoter-solicitors for charities and for religious organizations, donations to which are used in furtherance of their religious activities and especially to said Rescue Army and its promoter-solicitor.

XXIV

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that the provision of Section 44.19(3) which empowers the Board to make such investigation of the applicant and "his affairs" "as they deem advisable" and from such examination to base their determination of his qualifications to be granted a license, is reasonable and not vague in its delegation of powers and standards for their use and it erred in failing and refusing to hold and adjudge that said provision is not violative of due process under the Fourteenth Amendment to the Federal Constitution because it fixes no standard and authorizes said Board to make its decision upon matters wholly irrelevant to the purpose of the inquiry and to discriminate against some and favor others.

XXV

Subdivision 5 of Section 44.19 provides that the Board may examine the application and investigate the appli-

cant and his affairs as the Board deems advisable and [fol. 205] shall issue a license "to solicit as a promoter" contributions within said city if the Board is satisfied that the applicant is of good character and reputation and has sufficient financial responsibility to carry out the obligations incident to any solicitation to be made as such promoter, etc.

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that said provisions can be made to apply to a solicitor of donations for a religious organization, which donations are to be used and are used in furtherance of the religious activities of said organization, including its charities, without being an infringement of the said Fourteenth Amendment and the right of freedom of religion and the inhibitions therein against prior restraints upon the exercise thereof.

XXVI

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that the provision in Section 44.01 of said ordinance which states: "No person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners of the City of Los Angeles shall be considered a promoter within the meaning of this article" is a reasonable classification and in holding that it is valid and constitutional, since said provision arbitrarily, capriciously and unreasonably exempts employees and officers of endorsed agencies from the necessity of securing permits [fol. 206] and licenses to solicit, and from all of the burdensome and time-consuming requirements under which other solicitors and promoters are compelled to solicit, and said Supreme Court erred in holding that said exempting provision is not unreasonably discriminatory and does not deny the equal protection of the laws to charitable organizations not endorsed by said Board and to their solicitors and promoters, in contravention of the Fourteenth Amendment to the Constitution of the United States.

XXVII

Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that the definition of the term "promoter" in section 44.01 of said ordinance,

and the provisions contained in Section 44.19 thereof pertaining to promoters, do not create and constitute an arbitrary and unreasonable classification of solicitors, and said Court erred in holding that the classification thus provided is reasonable and the standards provided are adequate, and said Court further erred in failing and refusing to hold that, since no substantial difference exists between said definition of "promoters" and the definition of "solicitors" contained in Section 44.01 of said ordinance, and since the provisions of Section 44.19 concerning promoters require promoters to obtain a "license" and to pay a substantial fee therefor, and to provide a bond of $2,000.00, and to submit to unrestricted investigation by said Board, and the mandate of Section 44.19 by-[fol. 207] which promoters must file with said Board "such information as may be required," and to submit to denial of a license upon a mere exercise of the Board's whimsy, said definition and classification of promoters as distinguished from other solicitors is arbitrary and unreasonable and denies to promoters and their assistants the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution.

XXVIII

Said Supreme Court, in its opinion, decision and judgment in this case, erred in holding that certain provisions of Sections 44.03, 44.05, 44.06 and 44.12 of said ordinance, collectively and read together, are valid, constitutional and reasonable and are not burdensome as applied to secular or religious organizations and their solicitors and promoters who solicit donations of money and articles of personal property for charitable or religious or secular purposes.

Said Section 44.12 provides that the solicitor shall read his Information Card "to the person solicited" or "present to said person for his perusal," and allow him "sufficient opportunity to read the same before accepting any contribution."

Since, pursuant to Sections 44.03, 44.05 and 44.06 of said ordinance, the contents of said Information Card (permit or license), may be of unlimited volume and must, to comply with said last-named section, be so comprehensive as to render the requirements of Section 44.12 pro-

[fol. 208] hibitive of public solicitations of donations for money or personal property to be used in furtherance of religion, said Court erred in its opinion, decision and judgment in failing and refusing to hold that each of said provisions, especially all of them together, create a system of procedure which constitutes an unreasonable, burdensome and prohibitive prior restraint upon the exercise by the Rescue Army and its promoter and other solicitors in the rights of religious freedom and the free exercise thereof, and the right to dispense charity and to acquire, possess and dispose of property, as guaranteed by the Fourteenth Amendment to the Federal Constitution.

XXIX

Said Supreme Court, in its opinion, decision and judgment erred in that, as to each of the foregoing Assignments of Error, said Court failed and refused to hold that the error assigned has violated the right of said Rescue Army, as created and guaranteed by the Fourteenth Amendment to the Constitution of the United States, to freedom of religion and to the free exercise thereof and the right to dispense charity and to receive donations for charitable purposes through its promoter and solicitor, whether such activities be in furtherance of religion alone, or for charity alone, or for both.

For which errors as above assigned appellants pray that said judgment of the Supreme Court of the State of [fols. 209-242] California dated June 26, 1946, and finally entered and made, by the denial of appellants' petition for rehearing on July 24, 1946, reversing the judgment of the trial court, be reversed, and that a judgment be rendered in favor of appellant and for costs.

The Rescue Army By E. L. Wheeler, Appellants.
Charles T. Murdock. Robert H. Wallis, Attorney for Appellants.

[fol. 243] [File endorsement omitted.]

[fol. 244] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 29, 1946

Appellants, The Rescue Army, a corporation, and Charles T. Murdock, having prayed for allowance of appeal by them to the Supreme Court of the United States from the judgment made and rendered in the above entitled cause in and by the Supreme Court of the State of California on the 26th day of June, 1946, and finally entered upon denial of the petition for rehearing by The Rescue Army and Charles T. Murdock, on the 24th day of July, 1946, and from each and every part thereof, and having presented and filed their petition for appeal, Jurisdictional Statement, Assignments of Errors and prayer for reversal, pursuant to the applicable statutes and rules of the Supreme Court of the United States;

It is now ordered that an appeal be allowed, and [fol. 245] the same is hereby allowed in the above entitled case to the Supreme Court of the United States from the Supreme Court of the State of California, as provided by law; and

It is further ordered that the clerk of the Supreme Court of the State of California shall have prepared and prepare and certify a transcript of the entire record and proceedings, including the judgment and this order in said case and transmit the same to the Supreme Court of the United States at Washington, D. C., so that the Supreme Court of the United States and the Clerk thereof shall have the same within sixty days from this date.

Dated August 8, 1946.

Phil S. Gibran, Chief Justice of the Supreme Court of the State of California.

[fols. 246-248] Citation in usual form omitted in printing.

[fol. 249] [File endorsement omitted.]

[fol. 250] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

PRAECIPE—Filed August 29, 1946

To the Clerk of the Supreme Court of the State of California:

You are requested to prepare the following record on appeal to the Supreme Court of the United States in the above-entitled case:

1. The Petition filed in the District Court of Appeal;
2. The Defendant and Respondent's answer to plaintiff's Petition;
3. The Demurrer to the Petition;
4. Order of the Supreme Court transferring the appeal to the Supreme Court;
5. The opinion of the Supreme Court (majority opinion);
6. Dissenting opinion of Justice Carter, concurred in by Justice Schauer;
7. Dissenting opinion of Justice Edmonds;
8. Petition for Rehearing;

[fol. 251] 9. Order denying rehearing;

10. Minutes of the Supreme Court of California in said case;
11. None Issued.
12. Petition for allowance of appeal;
13. Bond Statement of jurisdiction on appeal;
14. Assignment of errors;
15. Prayer for reversal;
16. Order allowing appeal;
17. Citation and proof of service thereof;
18. The Praecipe;
19. Proof of service on appellees of copy of petition for allowance of appeal, jurisdictional statement, assignment of errors and notice to appellee of its right to make opposition to jurisdictional statement or file motion to dismiss or affirm with Clerk of Court possessed of the Record.

Attention is called to Subdivision 3 of Rule 10 of the United States Supreme Court which reads:

"No case will be heard until a record, containing in itself, and not by reference, all papers, exhibits, depositions, or other proceedings which are necessary to the hearing, shall be filed."

Compliance with rule is requested.

Robert H. Wallis, Attorney for Appellants.

[fol. 252] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 253] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS AND DESIGNATION RE RECORD—Filed October 21, 1946

Pursuant to Rule 13, subdivision 9 of the Revised Rules of the above entitled court, appellant files with the Clerk of said Court its statement of points upon which it intends to rely and its designation of those parts of the record which it thinks are unnecessary for consideration thereof, together with proof of service of said statement and designation on appellee, as follows:

Points Upon Which Appellant Intends to Rely:

The California State Supreme Court, in its decision, opinion and judgment in the instant case, erred as set forth in the following specifications and assignments:

1. That the "Charities and Relief" ordinance of said city is a valid exercise of the police power and is not, as applied to religious organizations, and especially to said Rescue Army and Charles T. Murdock, violative of [fol. 254] the right to exercise freedom of religion, guaranteed by the Fourteenth Amendment to the Federal Constitution, and that it does not arbitrarily and unreasonably, and by its mere fiat, segregate all religious-charitable activities of such organization from the missionary, evangelical and religious activities of such organization, and that it does not impose upon all religious-charitable activities of such organizations, unreasonable, burdensome and time-consuming prior restraints, and that its provisions do not delegate to an administrative board and its agents power to deny

such organizations the exercise of religious freedom without legislative standards to control their decision.

2. In holding that Section 44.09 (b) of said Charities and Relief Ordinance of said City of Los Angeles (being Chapter 4, Article 4 of the Municipal Code thereof) is reasonable, valid and constitutional and that it does not violate any clause of the Fourteenth Amendment to the Constitution of the United States, and said opinion, decision and judgment erred and itself violates all guarantees of said amendment, in that said Court thereby failed and refused to decide and hold that said section infringes the privileges and immunities, the equal protection of the laws and the due process clauses of said Constitution; in that said section requires that any person who solicits any contribution for any charitable purpose in the public places specified therein, must comply with *all of the other sections of said ordinance*, among which [fol. 255] other sections are provisions clearly violative of every guaranty and clause in said Fourteenth Amendment, many of which violations and provisions will be identified and specified in succeeding assignments of error herein.

3. Said opinion and decision errs in construing said ordinance in that it enacts by judicial legislation a provision not written into any section thereof by the law, reading in substance as follows: The Department is without authority to withhold such information cards when the required information has been filed and payment of four cents for each information card has been made; and said opinion and decision, based in a substantial part on such extraneous provision, thereby violates the due process clause of said Fourteenth Amendment and the right of freedom of religion and the exercise thereof by appellants, and the equal protection of the laws clause of said amendment.

4. Said opinion and decision and judgment err in construing Section 44.09 of said ordinance in that it adds, by unwarranted judicial legislation, the following provision:

"The denial of a permit is warranted only if the information furnished the board discloses fraud, or if the

solicitation as planned would interfere with public convenience and safety," and said judicial legislation and the opinion and decision based thereon, to-wit, that said section, construed as containing said added provision, is a reasonable and valid regulation, is non-discriminatory [fol. 256] and does not invade any of the liberties protected by the Fourteenth Amendment to the Federal Constitution, constitutes an infringement of the right of freedom of religion and a violation of due process of law guaranteed by said Fourteenth Amendment; and it is further assigned as violative of said constitutional provisions in that said Supreme Court failed and refused to hold that said section, without or with said added provision, is unreasonable; that it empowers said board to arbitrarily and capriciously and without guide or standard deny permission to solicit for charitable or religious organizations and to discriminate between applicants for permits and between the causes for which solicitations are planned, in violation of all clauses and provisions of said Fourteenth Amendment.

5. In holding, by referring to said opinion in The Gospel Army case, that the provisions of said Section 44.02 of said ordinance, which authorize said board to "recall every such information card and amend or correct the same" and to require the person who files it, or association on whose behalf the Notice of Intention was filed, to return said card and to present the recalled information card within 48 hours after receiving notice to return it, are reasonable and valid and not burdensome, and said Supreme Court erred in failing and refusing to hold that said provisions are unreasonably time-consuming and burdensome and infringe the rights of solicitors of donations and associations on whose behalf such solicitations are made to the exercise of the right of freedom of [fol. 257] religion and constitute prior restraints upon the exercise of such rights, and of the right to engage in charitable activities, as guaranteed by the Fourteenth Amendment to the Federal Constitution, and in holding that Section 44.02 of said ordinance is reasonable and not burdensome, and is valid in empowering the board to publish the results of investigations by the department pertaining to applications for permits to solicit and the allegations of the Notice of Intention and to give publicity

to any such results by such means as may be deemed best to reach the general public, and persons interested, and said opinion, decision and judgment erred in failing and refusing to hold that said last named provisions permit unreasonable delays and constitute prohibitive burdens upon the exercise of religious and charitable activities and the freedom of religion and the right to be charitable, in contravention of the due process clause of the Federal Constitution.

6. In holding valid and constitutional the provision in Section 44.03 of said ordinance which provides that in issuing an information card (permit to solicit) said department has power to show in said card that such issuance is "not an endorsement" or to state that "they endorse such charitable association," and said Supreme Court erred in failing and refusing to hold that said provision is a nullity on the ground that it delegates to the department power to endorse or refuse to endorse, [fol. 258] arbitrarily and capriciously, since no reasonable standard is provided to guide and control its decision, thus violating the due process clause of the Federal Constitution; also, on the ground that said enactment creates two classes of permits and of charitable associations, the endorsed and the unendorsed, and arbitrarily and unreasonably denies to the latter the privileges and protection which it grants to the former, in violation of the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution.

7. In holding valid and constitutional the provisions of said ordinance in Section 44.03 thereof, which provides that upon the filing of a Notice of Intention (petition for permit) to solicit with said department, before acting on the same, said department is authorized to investigate the allegations of said Notice of Intention, and to "have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is to be made," and said Supreme Court so erred, as aforesaid, in failing and refusing to hold that each and all of said actions so authorized to be taken by said department are unreasonable and constitute arbitrary and onerous limitations upon the right to solicit for charity, and as applied to appellants, are

prior restraints upon the exercise of the right of freedom of religion, and contravene the Fourteenth Amendment to the Federal Constitution upon both of these grounds.

[fol. 259] 8. In holding valid the provision in Section 44.03 of said ordinance which authorizes the said department, in issuing to an applicant for a permit to solicit or Information Card, to set forth therein information secured by its independent investigation concerning the applicant, of which he has not been apprised or had opportunity to refute or explain which, "in the opinion of the Board" shall be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made," and said Court erred in its opinion, decision and judgment in failing and refusing to hold that said provision is void and violates the due process clause of the Federal Constitution for each of the following reasons:

(1) That it empowers the defendants Board and Department to deprive the applicant of a property right and property without due process of law;

(2) That it provides no guide or standard by which said Board and said Department shall determine what information will be of assistance to the public to determine the nature and worthiness of the charitable purpose for which the solicitation is to be made;

(3) That it constitutes an unreasonable and burdensome previous restraint upon the exercise of the right to solicit for charitable purposes;

(4) That as applied to solicitations which are an integral part and in furtherance of the purely religious [fol. 260] activities of a religious organization, and as applied to said Murdock and the Rescue Army and its solicitors, it constitutes a prohibitive prior restraint upon the exercise of the right of freedom of religion.

9. Said Supreme Court erred in its opinion, decision and judgment in said case in holding to be valid and not violative of the right of religious freedom or of the right to engage in charitable activities the provisions of Section 44.05 of said ordinance, which provide as follows:

> "No person shall solicit, nor shall any officers or member of any association authorize any person to

solicit, any contribution for any charitable purpose unless * * * there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including [fol. 261] salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitations;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commission or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of [fol. 262] this Article and will require all solicitors engaged in such solicitation to read and be familiar

with all sections of this Article prior to making any such solicitation."

Said Supreme Court erred in its opinion, decision and judgment in failing and refusing to hold that each of the provisions of this section constitute a prior restraint upon the exercise of the right of religious freedom, and of the right to engage in charitable activities, and to hold that said prior restraints are inhibited by the Fourteenth Amendment to the Federal Constitution, and to hold that, as applied to said Murdock and the Rescue Army and to its solicitors, each and all of said provisions are unreasonable and burdensome and time-consuming previous restraints upon the exercise by each of them of the rights and violations of the said Fourteenth Amendment above set forth.

10. Said Supreme Court also erred in holding that Section 44.05, as applied to solicitations for charity by religious organizations, and especially by said Rescue Army and said Murdock, and where such solicitations are used in spreading religious doctrines and as an integral part of religious activities, said section does not create prior restraints upon the exercise of the right of religious freedom in violation of said Fourteenth Amendment.

11. In holding, by referring to the decision in The Gospel Army case, adequate and valid, the provision contained [fol. 263] in Section 44.06 of said ordinance, which empowers said Department to decide that a Notice of Intention (petition for permit) "does not disclose sufficient information for the public concerning the facts required by Section 44.05 to be set forth or concerning the person or association making such solicitation or on whose behalf such solicitation is made," and in failing and refusing to hold that said provision is void and violates the Fourteenth Amendment to the Federal Constitution, in that it empowers the Department to act and decide capriciously and arbitrarily and unreasonably, and provides no basis or standard to control the decision involved in said provision.

12. In holding, by referring to said Gospel Army opinion and by upholding Section 44.12 as valid and violative of no constitutional right, that all of the provisions of

Section 44.06 of said ordinance are valid and not burdensome, which provisions require that the applicant for permission to solicit "must file with the Notice of Intention a statement of any agreement made with any agent, solicitor, promoter . . . of such solicitation, together with a copy of each agreement, which may be in writing, and, if a change is made in such agreement, applicant must within twenty-four hours file a true copy of it with the Department, and must, if requested by the Department, provide any further information which the Board may require, and, if required by the Department, the Notice of Intention and additional information must be signed by the person intending to make such solicitation and by two officers of the association."

Said Supreme Court erred, as above set forth, *and in* [fol. 264] failing and refusing to hold that said provisions are violative of the Fourteenth Amendment to the Federal Constitution and of the rights of those who seek to engage in charitable or religious activities, because said provisions each create and constitute a burdensome bar and previous restraint upon the exercise of such persons to freely engage in both or either of said activities.

13. In holding that the provisions of Section 44.12 of said ordinance are reasonable, valid and constitutional and not burdensome, as applied to solicitors for charity, whether the solicitation be for charity alone or for charity in furtherance of religion, which provisions require that all solicitors must read the Information Card to any person solicited for donations or present it to such person and "allow him sufficient opportunity to read the same before accepting any contributions so solicited," and said Supreme Court erred in said opinion and decision in failing and refusing to hold that said provisions are so burdensome as to be prohibitive of solicitations, and are arbitrary and unreasonable prior restraints upon the exercise of the right of freedom of religion, and especially of the exercise of said right by said Murdock and by the Rescue Army and its solicitors, and of their rights to engage in charitable activities, and, hence, that said provisions contravene the Fourteenth Amendment to the Federal Constitution.

14. The said Supreme Court erred in holding that the provisions of Section 44.14 of said ordinance are not bur-
[fol. 265] densome and are reasonable, valid and constitutional, which provisions require that solicitors file with the Department a report to said Department, stating the contributions secured, "in detail, all expenses of or connected with such solicitation," "exactly," for what uses and the manner in which all contributions were disbursed, and that the statement be signed by the persons or associations obligated to file the Notice of Intention, and said Supreme Court erred in not holding and in refusing to hold that each of said requirements is burdensome and unreasonable and a prior restraint upon the freedom of religion of said Murdock and the Rescue Army and its solicitors and creates and constitutes a prohibited prior restraint upon the exercise of said right and their right to be charitable, and of all others similarly situated.

15. In holding valid Section 44.09 (b) said opinion holds that the provisions in respect to receipts to be given for donations and the contents thereof in Section 44.15 of said ordinance are not burdensome and violative of the right of freedom of religion, and are reasonable, valid and constitutional; said pertinent provisions are:

> "No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind of the
> [fol. 266] contribution, substantially the following matters:
>
> "(a) the name of the association, if any, in whose name or upon whose behalf the solicitation is made.
>
> "(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.
>
> "(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for."

16. Said Supreme Court, by its opinion, decision and judgment erred in holding as above stated and failing and refusing to hold that the foregoing provisions of Section 44.15 do not constitute prohibitive prior restraints upon the exercise of the right of religious freedom, and upon the exercise of that right and the right to dispense charities, of said Murdock and the Rescue Army and its solicitors and that therefore said provisions are violative of the Federal Constitution, amendment fourteen thereof.

17. In holding to be reasonable, valid and constitutional and the provision contained in Section 44.16 of said ordinance, which segregates solicitations for charitable pur- [fol. 267] poses from solicitations for evangelical, missionary or religious purposes and severs from the latter class all solicitations whose purposes are not purely evangelistic, missionary or religious, even though they are in furtherance and an integral part of religion, and said Supreme Court, in its opinion, decision and judgment erred in failing and refusing to hold that said provision is arbitrary, unreasonable and discriminatory, in that it attempts by law to remove activities which in fact are religious from the realm of religion and from the protection of the Fourteenth Amendment to the Federal Constitution and its guaranty of freedom of religion.

18. In upholding as valid, constitutional, and not burdensome or unreasonable, the provisions of Section 44.16 of said ordinance which authorizes the Board of Social Service Commissioners of said defendant City to investigate the matter of solicitations for solely evangelical, missionary or religious purposes and if "in the opinion of the Board" such solicitation "is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case," and said Supreme Court, by its opinion, decision and judgment, erred in failing and refus- [fol. 268] ing to hold that the last foregoing provision is not a direct violation of the right of freedom of religion and of its exercise, and that it does not permit and create

a prior restraint upon and interference with the exercise of said right as against appellants in violation of the Fourteenth Amendment to the Federal Constitution.

19. In holding that said Section 44.16 does not violate the rights of religious freedom and the right of property, guaranteed by said Fourteenth Amendment, of religious organizations, and especially such rights of the Rescue Army and of its solicitors and solicitor-promoters, in that said provision excludes from the exemption solicitations of money and goods if any part thereof is to be applied to charities incident to religious activities or to the compensation and support of the solicitor, because said section provides that solicitations "*made solely for evangelical, missionary or religious purposes*" are exempt from all other provisions of the ordinance which are challenged herein as violative of petitioners' rights, and by this provision said Murdock and the Rescue Army and any of its solicitors or its solicitor-promoters, who seek donations for the Army's charities, are arbitrarily denied the equal protection of the laws under said Fourteenth Amendment.

20. Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that said last-named provision does not vest in the Board unbridled power to arbitrarily and with favoritism nullify the [fol. 269] efforts of solicitors and promoters for religious purposes and organizations and to thereby infringe the rights of religious freedom and the acquirement of property in violation of said Fourteenth Amendment, of promoters and other solicitors for such organizations and purposes, and especially, such rights of said Murdock and the Rescue Army and of its promoters and other solicitors.

21. Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that provisions in Section 44.19(3) (a), (b) and (c), and subsection 3, are not burdensome and do not constitute prior restraints, and are reasonable, valid and constitutional. Said provisions are: "No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without a license from the Board so to do.

"(2) Application.

"To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application the applicant shall set forth, in addition to such information as may be required by the Board:

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member [fol. 270] of such unincorporated association, firm or partnership;

"(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation, that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

"(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter."

Subsection (3) requires the applicant to post a bond in the sum of $2,000.00, to insure payment of any "direct pecuniary loss sustained through any theft on the part of the principal."

22. In upholding Section 44.19, subsection (4), which requires the applicant for a promoter's license to pay a fee of $25.00 to said Board of Social Service Commissioners, and subsection (5) authorizes said Board to make such further investigation of the applicant and of "his affairs" as the "Board may deem advisable," and "if from such examination the Board shall be satisfied that the applicant is of good character and reputation," has "sufficient financial responsibility to carry out obligations incident to any solicitation such as applicant may [fol. 271] make," that his statements in his application "are true," etc., the application shall be granted. "Otherwise, the Board shall refuse to issue the license."

Said Supreme Court erred in holding and adjudging that the foregoing provisions are valid and constitutional and are not burdensome but are reasonable as applied to promoter-solicitors for charities and for religious organizations, donations to which are used in furtherance of their religious activities, and especially to said Rescue Army and its promoter-solicitor, appellant Murdock.

23. In holding that the provision of Section 44.19 (3) which empowers the Board to make such investigation of the applicant and "his affairs" "as they deem advisable" and from such examination to base their determination of his qualifications to be granted a license, is reasonable and not vague in its delegation of powers and standards for its use and said Court erred in failing and refusing to hold and adjudge that said provision is violative of due process under the Fourteenth Amendment to the Federal Constitution because it fixes no standard and authorizes said Board to make its decision upon matters wholly irrelevant to the purpose of the inquiry and to discriminate against some and favor others.

24. Subdivision 5 of Section 44.19 provides that the Board may examine the application and investigate the applicant for a promoter's license and his affairs as the Board deems advisable and shall issue a license "to solicit [fol. 272] as a promoter" contributions within said city if the Board is satisfied that the applicant is of good character and reputation and has sufficient financial responsibility to carry out the obligations incident to any solicitation to be made as such promoter, etc.

Said Supreme Court, in holding that said provisions can be made to apply to a solicitor of donations for a religious organization, which donations are to be used and are used in furtherance of the religious activities of said organization, including its charities, without being an infringement of the said Fourteenth Amendment and the right of freedom of religion and the inhibitions therein against prior restraints upon the exercise thereof, and in holding that said provision is not unreasonable and vague and a delegation of authority with no standard for its exercise and a violation of due process and the right of freedom of religion.

25. In holding that the provision in Section 44.01 of said ordinance which states: "No person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners of the City of Los Angeles shall be considered a promoter within the meaning of this article" is a reasonable classification and in holding that it is valid and constitutional, since said provision arbitrarily, capriciously and unreasonably exempts employees and officers of endorsed agencies from the necessity of securing permits and licenses to solicit, and from all of the burdensome and time-consuming requirements under which other solicitors [fol 273] and promoters are compelled by other provisions of said ordinance above pointed out to solicit, and said Supreme Court erred in holding that said exempting provision is not unreasonably discriminatory and does not deny the equal protection of the laws to charitable or religious organizations not endorsed by said Board and to their solicitors and promoters, in contravention of the Fourteenth Amendment to the Constitution of the United States.

26. Said Supreme Court, by its opinion, decision and judgment in this case, erred in holding that the definition of the term "promoter" in Section 44.01 of said ordinance, and the provisions contained in Section 44.19 thereof pertaining to promoters, do not create and constitute an arbitrary and unreasonable classification of solicitors, and said Court erred in holding that the classification thus provided is reasonable and the standards provided are adequate, and further erred in failing and refusing to hold that, since no substantial difference exists between said definition of "promoters" and the definition of "solicitors" contained in Section 44.01 of said ordinance, and since the provisions of Section 44.19 concerning promoters require promoters to obtain a "license" and to pay a substantial fee therefor, and to provide a bond of $2,000.00, and to submit to unrestricted investigation by said Board, and the mandate of Section 44.19 by which promoters must file with said Board "such information as may be required," and to submit to denial of a license upon a mere exercise of the Board's whimsy, said definition and classification of promoters as distinguished [fol. 274] from other solicitors is arbitrary and unrea-

sonable and denies to promoters and their assistant solicitors the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution.

27. Said Supreme Court, in its opinion, decision and judgment in this case, erred in holding that Sections 44.03, 44.05, 44.06 and 44.12 of said ordinance, collectively and read together, are valid, constitutional and reasonable and are not burdensome as applied to secular or religious organizations and their solicitors and promoters who solicit donations of money and articles of personal property for charitable or religious or secular purposes.

Said Section 44.12 provides that the solicitor shall read his Information Card "to the person solicited" or "present to said person for his perusal," and allow him "sufficient opportunity to read the same before accepting any contribution."

Since, pursuant to Sections 44.03, 44.05 and 44.06 of said ordinance, the contents of said Information Card, (permit or license), may be of unlimited volume and must, to comply with said last-named sections, be so comprehensive as to render the requirements of Section 44.12 prohibitive of public solicitations of donations for money or personal property to be used in furtherance of religion, said Court erred in its opinion, decision and judgment in failing and refusing to hold that each of said provisions, especially all of them together, create a system of procedure which constitutes an unreasonable, burden [fol. 275] some and prohibitive prior restraint upon the exercise by the Rescue Army and its promoters and other solicitors in the rights of religious freedom and the free exercise thereof, and the right to dispense charity and to acquire, possess and dispose of property, as guaranteed by the Fourteenth Amendment to the Federal Constitution.

28. Said Supreme Court, in its opinion, decision and judgment erred in that, as to each of the foregoing Assignments of Error, said Court failed and refused to hold that the error assigned has violated the right of appellants, the Rescue Army and Charles F. Murdock, as guaranteed by the Fourteenth Amendment to the Constitution of the United States, to freedom of religion and to the free exercise thereof and the right to dispense charity and to receive donations for charitable purposes through

promoters and solicitors, whether such activities be in furtherance of religion alone, or for charity alone, or for both.

Designation of Parts of the Record Thought Unnecessary.

Appellant thinks that all parts of the record are necessary, and therefore designates as necessary for the consideration of the above points, all parts of said record.

Robert H. Wallis, Attorney for Appellants.

[fol. 275a] Service of a copy of the within Statement of Points and Designation Re Record is hereby acknowledged, this 17th day of October, 1946.

Ray L. Chesebro, City Attorney, John L. Bland, Deputy, Attorney for Appellee.

Service of a copy of the within Statement of Points and Designation Re Record is hereby acknowledged, this 18th day of October, 1946.

K. Z. Holaday, Secretary of Municipal Court.

[fol. 276] Supreme Court of the United States,
October Term, 1946

No. 574

Order Noting Probable Jurisdiction—October 28, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is assigned for argument immediately following No. 103, The Gospel Army vs. City of Los Angeles et al.

Endorsed on Cover: File No. 51,438 California, Supreme Court, Term No. 574, The Rescue Army, a Corporation, and Charles T. Murdock, Appellants, vs. The Municipal Court of the City of Los Angeles. Filed October 5, 1946. Term No. 574 O.T. 1946.